DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, 392, 393, 396, and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA–2005–23315]

RIN 2126–AA86

Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes regulations for entities offering intermodal chassis to motor carriers for transportation of intermodal containers in interstate commerce. As mandated by section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), this rulemaking would require intermodal equipment providers (IEPs) to register and file with FMCSA an Intermodal Equipment Provider Identification Report (Form MCS–150C); display the USDOT Number, or other unique identifier, on each intermodal container chassis offered for transportation in interstate commerce; establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each intermodal container chassis; maintain documentation of the program; and provide a means to effectively respond to driver and motor carrier reports about intermodal container chassis mechanical defects and deficiencies. The proposed regulations would for the first time make IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The agency is also proposing additional inspection requirements for motor carriers and drivers operating intermodal equipment. The intent of this rulemaking is to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. Improved maintenance is expected to result in fewer out-of-service orders and highway breakdowns involving intermodal chassis and improved efficiency of the Nation's intermodal transportation system. To whatever extent inadequately maintained intermodal chassis are responsible for, or contribute to, crashes, this proposal would also help to ensure that commercial motor vehicle (CMV) operations are safer.

DATES: Comments must be received by March 21, 2007.

ADDRESSES: Comments should refer to Docket No. FMCSA–2005–23315, and may be filed in electronic form, mailed, or delivered to the following addresses:

- The USDOT Docket Management System (DMS) on the Web-based form at the Web link: *http://dmses.dot.gov/submit*, and type only the last 5 digits of the docket number (23315) to access the docket. If you file an electronic comment, we recommend that your name and other contact information be included.
- *Through the Federal eRulemaking Portal: http://www.regulations.gov*, using the Regulation Identification Number (RIN 2126–AA86) and following instructions on the Web-based form.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail or Deliver to:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401 (Nassif Building on the Plaza Level), Washington, DC 20590–0001.

Instructions: If you want the agency to acknowledge your comments, please include a self-addressed, stamped envelope or postcard, or simply print the acknowledgement page that appears after submitting your comments electronically.

Public Participation: All public comments and related material concerning this proposed rule in Docket No. FMCSA–2005–23315, whether in paper or electronic form, will be considered by the agency, and will be available to the public on the DMS Web site: *http://dms.dot.gov*. The agency will also consider all comments that regulations.gov forwards to it. Comments may be read and/or copied at the Docket Management facility, located at 400 Seventh Street, SW., Room PL–401 on the Plaza Level of the Nassif Building, Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone may view or download comments submitted in any of DOT's dockets by the name of the commenter or name of the person signing the comment (if submitted on behalf of an association, business, labor union, or other entity). More information about DOT's privacy policy may be found in DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477, or on the DMS Web site: *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, (202) 366–4009, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act) and section 4118 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144, at 1729, August 10, 2005, codified at 49 U.S.C. 31151).

The 1984 Act provides authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.'' 49 U.S.C. 31136(a).

This NPRM would establish a program to ensure that intermodal equipment (primarily chassis) [1] interchanged to motor carriers and used to transport intermodal containers is safe and systematically maintained. An intermodal chassis meets the definition of a ''commercial motor vehicle'' under 49 U.S.C. 31132(1)(A) because it ''has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds * * *'' The NPRM is based primarily on section 31136(a)(1), especially the mandates dealing with maintenance and equipment, and secondarily on section 31136(a)(4). Entities that interchange intermodal equipment to motor carriers would be required to establish a program to systematically inspect, repair, and maintain that equipment, if they do not already have such a program in place.

Section 4118 of SAFETEA–LU added new section 31151, entitled ''Roadability,'' to subchapter III of chapter 311 of title 49, United States Code. Section 31151(a)(1) requires the Secretary of Transportation to issue regulations to be codified in the Federal Motor Carrier Safety Regulations (FMCSRs) ''to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.'' Section 31151(a)(3) specifies, in considerable detail, a minimum of 14 items that must be included in the regulations, each of which is discussed later in the preamble and included in the proposed rules or existing agency procedures. Departmental employees designated by the Secretary are authorized to inspect intermodal equipment, and copy related maintenance and repair records (section 31151(b)). Any intermodal equipment that fails to comply with applicable Federal safety regulations may be placed out of service by Departmental or other Federal, State, or governmental officials designated by the Secretary until the necessary repairs have been made (section 31151(c)). State, local, or tribal requirements inconsistent with a regulation adopted pursuant to section 31151 are preempted (section 31151(d)). Specifically, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, is preempted on the effective date of the final regulation resulting from this rulemaking (section 31151(e)(1)), but preemption may be waived upon application by the State if the Secretary finds that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce (section 31151(e)(2)).

All of these provisions of SAFETEA–LU are discussed in the preamble and embodied in the regulatory text of this NPRM.

Previous Rulemaking Efforts To Improve Chassis Maintenance

On February 17, 1999 (64 FR 7849), the Federal Highway Administration (FHWA), which then had responsibility for commercial motor vehicle safety, published an Advance Notice of Proposed Rulemaking (ANPRM) concerning inspection, repair, and maintenance responsibilities for intermodal container chassis. The ANPRM was in response to a petition for rulemaking filed by the American Trucking Associations (ATA). ATA argued that rail carriers, ocean carriers, and other entities that offer container chassis for transportation in interstate commerce frequently fail to ensure the container chassis are in safe and proper operating condition. ATA believed poor maintenance of this intermodal equipment was a serious safety problem and requested FHWA to make the equipment providers responsible for the roadworthiness of the container chassis tendered to motor carriers.

ATA requested that the FMCSRs be amended to make intermodal equipment providers subject to 49 CFR part 396, concerning inspection, repair, and maintenance of commercial motor vehicles. Under the ATA proposal, equipment providers would have been prohibited from offering an intermodal container chassis for transportation in such condition that it would likely cause a crash or a breakdown of the vehicle. Motor carriers would have been prohibited from certifying to equipment providers that the intermodal container chassis or container meets applicable safety regulations, unless the equipment provider provided the motor carrier with adequate equipment, time, and the proper facilities to make a full inspection of the container chassis and any necessary repairs to the equipment prior to the tendering of the equipment to the motor carrier for operation in interstate commerce. ATA also requested that the regulations be amended so motor carriers would not be liable for civil or criminal penalties for operating a container chassis, or transporting a container that did not meet the applicable safety requirements, if the equipment was offered for transportation in an unsafe or poor condition.

On October 20, 1999 (64 FR 56478), as follow-up to the ANPRM, the Office of the Secretary of Transportation (OST) announced a series of public meetings for motor carriers, equipment providers, and other interested parties to discuss inspection, repair, and maintenance practices for ensuring that container chassis and trailers are in safe and proper operating condition at all times. Representatives from the FHWA, the Federal Railroad Administration (FRA), the Maritime Administration (MARAD), and OST participated in the listening sessions. These sessions were intended to help DOT broaden its knowledge of the safety implications of industry practices involving terminal operators

[1] The intermodal equipment described are intermodal container chassis specifically designed to transport cargo containers. The loaded cargo containers are transported on ships and trains to various ports and rail facilities in the United States and then transferred to chassis trailers for transportation by highway to their final destination. Similarly, empty containers may be loaded at shippers' facilities in the United States, and then transported on a chassis trailer to ports and rail yards for subsequent portions of the movement to be handled by additional modes to other destinations in the United States or abroad. Chassis trailers carrying containerized cargo are used to transport more than $450 billion in cargo entering and leaving the United States annually.

or other parties that tender intermodal equipment to motor carriers. The sessions were held in Seattle, WA; Des Plaines (Chicago), IL; and Jamaica (New York City), NY, during November 1999.

On November 29, 2002 (67 FR 71127), FMCSA published a notice announcing the agency would study the feasibility of using the Negotiated Rulemaking process to develop rulemaking options concerning the maintenance of intermodal container chassis and trailers. The neutral convener hired by FMCSA interviewed individuals and organizations that represented interests most likely to be substantially affected by a rulemaking concerning this subject, and concluded that a negotiated rulemaking was unlikely to produce a set of consensus recommendations to FMCSA. Therefore, FMCSA decided not to conduct a negotiated rulemaking on this subject, and concluded that it would be best to withdraw the ANPRM and to start afresh.

On December 31, 2003 (68 FR 75478), FMCSA published a notice withdrawing the ANPRM. While FMCSA could quantify the costs of regulatory options that could potentially result in improved maintenance practices by equipment providers, there was insufficient data to quantify the safety benefits of a rulemaking based on the ATA petition. Available data showed that a significant number of container chassis dispatched from intermodal terminals were later found to have safety defects during roadside inspections, but the relationship between these defects and crash causation had not been substantiated.

In January of 2004, the Secretary announced that DOT would launch a safety inspection program for intermodal container chassis. The inspection program would provide added oversight to help ensure that intermodal container chassis used by motor carriers to transport intermodal cargo containers from seaports and rail yards are in safe and proper working order. The Secretary said:

''Every day millions of dollars worth of cargo are transferred from ships and rail to trailer beds and hauled away by trucks. It is essential that we have a full and complete safety program focused on the trailer beds used to haul cargo containers.''

The Secretary explained the new inspection program would be modeled after FMCSA's compliance review program already in place for the nation's interstate motor carriers. Intermodal equipment providers would be required to obtain a USDOT Number or other unique identifier and display it on their container chassis so that safety performance data could be captured and attributed to the equipment provided. FMCSA would apply the same civil penalty structure and enforcement actions used for motor carriers to intermodal equipment providers that demonstrate patterns of non-compliance with the FMCSRs.

As part of this new activity, FMCSA compiled and analyzed additional intermodal chassis inspection data from 38 States. The information derived from this analysis, particularly violations that caused vehicles to be placed out of service, provided evidence that intermodal equipment failed to meet the FMCSRs more often than non-intermodal equipment.

SAFETEA—LU Requirements Codified at 49 U.S.C. 31151

Section 4118 of SAFETEA—LU amended 49 U.S.C., chapter 311, by adding new section 31151 (49 U.S.C. 31151) titled ''Roadability.'' Section 31151 states:

The Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

Section 31151(a)(3) lists 14 elements to be included in the regulations as follows:

''(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

''(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

''(C) a requirement that an intermodal equipment provider identified under subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

''(D) a requirement to ensure that each intermodal equipment provider identified under subparagraph (A) maintains a system of maintenance and repair records for such equipment;

''(E) requirements that—

''(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

''(ii) the inspection under clause (i) be conducted as part of the Federal requirement in effect on the date of enactment of this Act that a driver be satisfied that the intermodal equipment components are in good working order before the equipment is operated over the road;

''(F) a requirement that a facility at which an intermodal equipment provider regularly makes intermodal equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

''(G) a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal motor carrier safety regulations;

''(H) a civil penalty structure consistent with section 521(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal motor carrier safety regulations;

''(I) a prohibition on intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

''(J) a process by which motor carriers and agents of motor carriers shall be able to request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under subparagraph (A) that is alleged to be not in compliance with the regulations under this section;

''(K) a process by which equipment providers and agents of equipment providers shall be able to request the Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with the regulations issued under this section;

''(L) a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent;

''(M) a requirement that any actual damage or defect identified in the process established under subparagraph (L) be repaired before the equipment is made available for interchange to a motor carrier and that repairs of equipment made pursuant to the requirements of this subparagraph and reports made pursuant to the subparagraph (L) process be documented in the maintenance records for such equipment; and

''(N) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their motor carrier safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.''

Section 31151(b) authorizes the Secretary or DOT employee designated by the Secretary to inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials. Section 31151(c) extends the authority of Federal, State,

or government officials designated by the Secretary to place out of service any intermodal equipment that is determined under this section to fail to comply with applicable Federal safety regulations; to prevent its use on a public highway until the repairs necessary to bring such equipment into compliance have been completed; and to require documentation of repairs in the equipment maintenance records.

Section 31151(d) preempts statutes, regulations, orders, or other requirements of a State, a political subdivision of a State, or a tribal government relating to CMV safety, if the law, regulation, order, or other requirement exceeds or is inconsistent with Federal rules adopted to implement the roadability statute. Section 31151(e)(2) authorizes the Secretary to make a nonpreemption determination if the State requirement for the inspection and maintenance of intermodal chassis by intermodal equipment providers was in effect on or before January 1, 2005, and is as effective as the Federal requirement and does not unduly burden interstate commerce. Subsequent amendments to State requirements that were not preempted must be submitted to the agency for a preemption determination. State provisions that would be preempted may remain in effect only until the date on which implementing regulations under this section take effect. Finally, section 31151(f) defines the terms ''intermodal equipment,'' ''intermodal equipment interchange agreement,'' ''intermodal equipment provider,'' and ''interchange.''

II. Current Rulemaking To Improve Intermodal Equipment Safety

Rulemaking Proposal

The proposed regulations would, for the first time, make intermodal equipment providers (IEPs) subject to the FMCSRs. The new requirements would ensure that intermodal container chassis and trailers tendered to motor carriers by steamship lines, railroads, terminal operators, chassis pools, etc., comply with the applicable motor carrier safety regulations. The explicit inclusion of equipment providers in the scope of FMCSRs would ensure that intermodal equipment providers would be subject to the same enforcement proceedings, orders, and civil penalties as those applied to motor carriers, property brokers, and freight forwarders. The proposed rule would also impose additional requirements on motor carriers and drivers operating intermodal equipment.

FMCSA proposes to address the SAFETEA–LU requirements by adding to 49 CFR part 390, a new subpart C titled ''Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment.'' In addition, we would amend parts 385, 386, 390, 392, 393, and 396, as well as Appendix G to Subchapter B, to make the appropriate sections applicable to IEPs. With these proposed changes to the current FMCSRs, the agency will address the SAFETEA–LU requirements codified at 49 U.S.C. 31151(a)(3):

- A roadability review based on elements of the Safety Fitness Procedures to enable FMCSA to assess the safety of equipment tendered by IEPs (part 385).Section 31151(a)(3)(G).
- Application of FMCSA Rules of Practice for safety compliance proceedings (part 386). Sections 31151(a)(3)(H) and (I).
- Compliance with general safety regulations, including filing of an Intermodal Equipment Provider Identification Report (FMCSA Form MCS–150C), and display of the intermodal equipment provider's USDOT number or other unique identification number on intermodal equipment (part 390). Sections 31151(a)(3)(A), (B), (C), (D), (J), (K), and (N).
- Provisions for CMV drivers to inspect specific intermodal equipment components and be satisfied that they are in good working order before the equipment is operated over the road (part 392). Sections 31151(a)(3)(E) and (F).
- Extension of the applicability of regulations concerning parts and accessories necessary for safe operation to intermodal equipment and IEPs (part 393).Sections 31151(a)(3)(C).
- Extension of the applicability of regulations concerning inspection, repair, and maintenance of CMVs to IEPs (part 396). Sections 31151(a)(3)(C), (D), (L), and (M).

The proposed changes to each part are described below.

Part 385—Safety Fitness Procedures

FMCSA proposes to conduct roadability reviews in order to evaluate the safety and regulatory compliance status of IEPs. This activity would consist of an on-site examination of an intermodal equipment provider's inspection, repair, and maintenance operation and records to determine its compliance with applicable FMCSRs (i.e., parts 390, 393, and 396). However, FMCSA would not issue safety ratings to IEPs.

FMCSA would use its Safety Status Measurement System (SafeStat) to identify and prioritize which IEPs would be subject to a roadability review. SafeStat is an automated, data-driven analysis system designed to incorporate current on-road safety performance information on all motor carriers, and IEPs, with on-site reviews and enforcement history information, when available, in order to measure relative safety fitness. SafeStat plays an important role in determining the safety fitness in several FMCSA/State programs including the Performance and Registration Information Systems Management, National Compliance Review Prioritization, and the roadside Inspection Selection System. FMCSA would use the system to continuously quantify and monitor changes in the safety status of IEPs. The agency's initial focus would be on the Vehicle Safety Evaluation Area (SEA). For more information about SafeStat, visit FMCSA's ''SafeStat Online'' at URL: *http://ai.fmcsa.dot.gov.*

In addition to IEPs that are identified in SafeStat, a roadability review may be conducted on an IEP that falls into one of the following categories: (1) The provider is the subject of a complaint that FMCSA determines to be non-frivolous; (2) the provider has equipment involved in a pattern of recordable crashes or hazardous materials incidents; (3) the provider requests FMCSA to conduct a review of its operations; (4) the provider demonstrates a pattern of non-compliance; or (5) the agency determines there is a need for a review.

FMCSA would conduct roadability reviews under proposed §§ 385.501 and 385.503 using the current framework of the Compliance Analysis and Performance Review Information System (CAPRI). The CAPRI application provides a standardized method for conducting reviews on motor carriers, hazardous materials shippers, and cargo tank facilities. It is also used for safety audits on new carriers and Mexico-domiciled carriers seeking to operate in the United States. The application includes extensive checking for data integrity and electronic file transfer for expediting data flow, and is for use by both Federal and State enforcement officials.

Under proposed § 385.503, if FMCSA finds violations of parts 390, 393, or 396, the agency would cite the IEP for those violations. The agency may also impose civil penalties according to the civil penalty structure contained in 49 U.S.C. 521(b). FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment

from a particular location or multiple locations if the provider's FMCSRs compliance is so deficient that its continued operation constitutes an imminent hazard to highway safety. This is authorized by 49 U.S.C. 521(b)(5)(A), which directs the agency to ''order a vehicle * * * out-of-service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the [agency] shall impose no restriction on any * * * employer beyond that required to abate the hazard.''

Part 386—Rules of Practice

FMCSA proposes to amend 49 CFR part 386 concerning rules of practice for enforcement proceedings before its Assistant Administrator. The purpose of the proposed changes is to apply part 386 to intermodal equipment providers now subject to FMCSA jurisdiction.

Section 386.1 Scope of the rules of this part. FMCSA would amend existing § 386.1 to include an explicit reference to intermodal equipment providers. They would be subject to the same enforcement proceedings, orders, and civil penalties as motor carriers, property brokers, and freight forwarders, with respect to the safety of their equipment tendered and their oversight of inspection, repair, and maintenance of that equipment.

Section 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited. FMCSA proposes to amend § 386.83 to extend the applicability of this section to intermodal equipment providers.

Part 390—Federal Motor Carrier Safety Regulations

Section 390.3 General applicability. Section 390.3(h) would explicitly state that intermodal equipment providers are subject to parts 385, safety fitness procedures; 386, rules of practice; 390 (except § 390.15(b)); 393, parts and accessories necessary for safe operation; and 396, inspection, repair, and maintenance of commercial motor vehicles.

Section 390.5 Definitions. FMCSA would add definitions of ''interchange,'' ''intermodal equipment,'' ''intermodal equipment interchange agreement,'' and ''intermodal equipment provider'' to § 390.5 to provide a consistent vocabulary for dealing with intermodal equipment issues. These definitions are identical to the definitions for these terms included in 49 U.S.C. 31151(f). ''Interchange'' would be the word used to describe the act of providing intermodal equipment to a motor carrier. Leasing equipment to a motor carrier is not included in this term.

''Intermodal equipment'' rather than intermodal container chassis would be the term used in the regulation. Though intermodal container chassis are by far the most common variety of intermodal equipment, FMCSA decided to propose a broader term ''intermodal equipment'' to cover all the different kinds of trailers, chassis, and associated devices used to transport intermodal containers.

''Intermodal equipment interchange agreement'' would describe the written agreement between an intermodal equipment provider and a motor carrier, which establishes the responsibilities and liabilities of both parties. The Uniform Intermodal Interchange and Facilities Access Agreement is commonly used for this purpose.

''Intermodal equipment provider'' would describe the party that interchanges the intermodal equipment with the motor carrier, and that, under these proposed rules, would be responsible for systematic inspection, repair, and maintenance of the intermodal equipment.

Section 390.15 Assistance in investigations and special studies. FMCSA would amend § 390.15(a) to add a reference to intermodal equipment providers, requiring them to provide records, information, and assistance in an investigation of an accident, as defined in 49 CFR 390.5. Intermodal equipment providers would not be required to maintain the accident register required of motor carriers in § 390.15(b), but any accident information they do retain must be made available to investigators upon request.

Section 390.19 Motor carrier, HM shipper, and intermodal equipment provider identification reports. FMCSA would require intermodal equipment providers to file an Intermodal Equipment Provider Identification Report, Form MCS–150C and to update it every two years.

Section 390.21 Marking of self-propelled CMVs, and intermodal equipment. FMCSA would require intermodal equipment providers (*i.e.*, the entity tendering the equipment, which may or may not be the owner) to mark intermodal equipment with an identification number issued by FMCSA. This number could be a USDOT number or another unique identification number. The USDOT number is used to identify all motor carriers in FMCSA's registration/information systems. It is also used by States as the key identifier in the Performance and Registration Information Systems Management (PRISM) project, a cooperative Federal/State program that makes motor carrier safety a requirement for obtaining and keeping commercial motor vehicle registration and privileges. FMCSA seeks comment on what other unique identification numbers could serve the same purpose as the USDOT number.

Part 390, Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

FMCSA proposes a new subpart C, §§ 390.40–390.44, to address the specific requirements for intermodal equipment providers in SAFETEA–LU.

Proposed § 390.40 lists all of the responsibilities of an intermodal equipment provider, including identifying its operations to FMCSA; marking intermodal equipment; inspecting, repairing, and maintaining the equipment; keeping records of inspection, repair, and maintenance; providing procedures and facilities for inspection, repair, and maintenance; and refraining from placing equipment in service if the equipment would pose an imminent hazard, as defined in § 386.72(b)(1).

Proposed paragraph (h) of § 390.40 requires that any repairs or replacements must be made in a timely manner after a driver notifies the provider of such damage, defects, or deficiencies. FMCSA proposes a limited timeframe for repair or replacement actions because, in the intermodal sector, drivers' income is usually based upon the number of trips a driver can complete in a day. Drivers who report defects or deficiencies to equipment providers face potential delays in leaving the ports or terminals while waiting for a container chassis to be repaired or replaced. Therefore, FMCSA wishes to reduce the amount of time that drivers may have to wait after pointing out defects or deficiencies, thereby encouraging the driver to make such reports. Driver reports will bring potential equipment defects and deficiencies to the equipment provider's attention so they can be remedied. Operating safe equipment is clearly in the drivers'—and FMCSA's—interest.

Proposed § 390.42(a) and (b) prescribe procedures for intermodal equipment providers and motor carriers to request correction of publicly-accessible safety violation information for which the intermodal equipment provider or motor carrier should not have been held responsible. An intermodal equipment provider or motor carrier would use FMCSA's DataQs system for this purpose. The DataQs system is an electronic means for filing concerns

about Federal and State data released to the public by FMCSA. Through this system, data concerns are automatically forwarded to the appropriate office for resolution. The system also allows filers to monitor the status of each filing.

Proposed § 390.42(c) and (d) prescribe procedures for requesting that FMCSA investigate any motor carrier or intermodal equipment provider that may be in noncompliance with FMCSA requirements.

Proposed § 390.44 prescribes the responsibilities of drivers and motor carriers, as opposed to intermodal equipment providers, when operating intermodal equipment. The driver would be required to make a pre-trip inspection and would not be allowed to operate the equipment on the highway if the equipment is not in good working order. The driver or the motor carrier would also be required to report any damage or deficiencies in the equipment at the time the equipment is returned to the provider. This report would have to include, at a minimum, the items listed in § 396.11(a)(2).

Proposed § 390.46 would address preemption by the FMCSRs of State and local laws and regulations concerning inspection, repair, and maintenance. Generally, a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the FMCSRs.

Part 392—Driving of Commercial Motor Vehicles

FMCSA proposes to amend § 392.7 to cover intermodal equipment similar to the current requirements for other CMVs. The proposal would require drivers preparing to transport intermodal equipment to make a visual or audible inspection of specific components of intermodal equipment, and to satisfy the driver that the intermodal equipment was in good working order before operating it over the road.

Part 393—Parts and Accessories Necessary for Safe Operation

FMCSA proposes to revise § 393.1 to make equipment providers responsible for offering in interstate commerce intermodal equipment that is equipped with all required parts and accessories. The proposed changes would ensure each required component and system is in safe and proper working order. This requirement is separate and distinct from the provisions of part 396, which cover responsibilities for inspection, repair, and maintenance of the CMV or chassis, without specifying all of the parts and accessories necessary for safe operation.

Part 396—Inspection, Repair, and Maintenance

Part 396 would be amended to require intermodal equipment providers to establish a systematic inspection, repair, and maintenance program and to maintain records documenting the program. Equipment providers would also be required to comply with FMCSA's periodic and annual inspection regulations. Furthermore, intermodal equipment providers would be required to establish a process by which a motor carrier or driver could report the defects or deficiencies on container chassis that they discover or that are reported to them. Intermodal equipment providers would then be required to document whether they have repaired the defect or deficiency, or that repair was unnecessary, before the intermodal equipment was interchanged.

Section 396.1 Scope. FMCSA proposes to revise § 396.1 to require every intermodal equipment provider to comply with, and be knowledgeable of, the applicable FMCSA regulations.

Section 396.3 Inspection, repair, and maintenance. FMCSA proposes to amend § 396.3 to require intermodal equipment providers to be responsible for the systematic inspection, repair, and maintenance of intermodal equipment, and to keep the associated records.

Section 396.11, Driver vehicle inspection reports. FMCSA proposes to amend § 396.11 to add a new paragraph (a)(2) specifying that the intermodal equipment provider must have a process to receive reports of defects or deficiencies in the equipment. Proposed paragraph (a)(2) lists the specific components of intermodal equipment that must be included on the driver vehicle inspection report.

Section 396.12, Procedures governing the acceptance by intermodal equipment providers of reports required under § 390.44(b) of this chapter from motor carriers and drivers. FMCSA would add a new § 396.12 to require intermodal equipment providers to establish a procedure to accept reports of defects or deficiencies from motor carriers or drivers, repair the defects that are likely to affect safety, and document the procedure.

Sections 396.17, Periodic Inspection, 396.19, Inspector qualifications, 396.21, Periodic inspection recordkeeping requirements, 396.23 Equivalent to periodic inspection. FMCSA proposes to revise these sections to make clear their application to intermodal equipment providers.

Section 396.25, Qualifications of brake inspectors. In its ANPRM of February 3, 1989 (54 FR 5518), concerning Federal standards for the maintenance and inspection of CMV brakes, FMCSA concluded that the legislation requiring the rulemaking action applied only to employees of motor carriers [section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988, (Subtitle B of Title IX of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, 102 Stat. 4181, at 4531) now codified at 49 U.S.C. 31137(b)]. Section 9110(b) required regulations to ensure that CMV brakes are properly maintained and inspected by ''appropriate employees.'' Because this provision amended the Motor Carrier Safety Act of 1984 (the 1984 Act) and was codified in section 31137, ''employee'' had the meaning given to that term in 49 U.S.C. 31132(2), which specifically means ''a mechanic.'' However, the term ''employer'' in section 31132(3) means, among other things, a person who ''owns or leases a commercial motor vehicle * * * or assigns an employee to operate it.'' The agency generally treated the 1984 Act term ''employer'' as equivalent to ''motor carrier.'' But since independent repair and maintenance shops neither own nor lease CMVs, nor assign employees to operate them, the agency concluded that mechanics (employees) who did not work for a motor carrier (employer) were not covered. ''An example of this would be independent garage owners and their mechanics.'' (54 FR 5518).

The example was correct, but the statutory term ''employer'' also describes intermodal equipment providers who own CMVs, namely intermodal chassis. Such equipment providers and their mechanics are therefore subject to the 1984 Act, including the brake inspector qualifications adopted pursuant to 49 U.S.C. 31137(b), which are now codified at § 396.25.

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

FMCSA proposes to amend Appendix G, item 6 (Safe Loading) to add devices used to secure an intermodal container to a chassis. These devices include rails or support frames, tiedown bolsters, locking pins, clevises, clamps, and hooks.

Proposed Enforcement Plans

Review of Maintenance Programs

If this proposal is promulgated as a final rule, FMCSA would initiate reviews of intermodal equipment providers' maintenance programs similar to the reviews FMCSA currently conducts on motor carriers' safety management controls.

- The reviews would examine equipment providers' compliance with FMCSA commercial motor vehicle safety regulations to which they are subject, especially parts 390, 393, and 396 and Appendix G. Intermodal equipment providers would be held responsible for the inspection, repair, and maintenance of their intermodal equipment, using standards similar to those used by motor carriers for the inspection, repair, and maintenance of their trailers.
- The reviews may be triggered when roadside inspection reports, crash report data, or driver or carrier complaints indicate a pattern of non-compliance by an equipment provider.
- FMCSA would develop a procedure to review IEPs' compliance with the applicable FMCSRs, with a focus on the safe operating condition of the intermodal equipment, the involvement of that equipment in recordable highway crashes, and the intermodal equipment provider's safety management controls. The agency would develop review procedures, enforcement procedures, and rules of practice relevant to the responsibility of equipment providers to tender roadworthy equipment to motor carriers. However, if FMCSA were to subject an intermodal equipment provider to an operations out-of-service order, the order would prevent that provider from tendering equipment to motor carriers. The order would not apply to other transportation-related activities of an intermodal equipment provider that is a steamship company or rail carrier. Intermodal equipment providers that fail to attain satisfactory compliance with applicable federal motor carrier safety regulations would be subject to a civil penalty structure consistent with 49 U.S.C. 521(b).

Imminent Hazard Determinations

Under 49 U.S.C. 31151(a)(3)(I), the Secretary of Transportation is required to prohibit intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an ''imminent hazard.''

The authority to declare that a motor carrier poses an imminent hazard is codified in 49 U.S.C. 521(b)(5). If FMCSA, after an investigation, determines that violations of the FMCSRs or the statutes under which they were established pose an ''imminent hazard'' to safety, the agency is required to order the vehicle or employee operating that vehicle out of service, or order a motor carrier to cease all or part of its commercial motor vehicle operations.

Imminent hazard is defined in 49 U.S.C. 521(b)(5)(B) and 49 CFR 386.72(b)(1) to mean ''any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.'' An imminent hazard may be a violation that is recurring and can be remedied by the carrier's ceasing the violation (e.g., an intermodal equipment provider is discovered operating intermodal equipment that has been declared out of service). It may also be argued that a motor carrier that continually and frequently violates multiple regulatory requirements poses an imminent hazard to the motoring public.

FMCSA proposes to issue an Imminent Hazard Out-of-Service (OOS) Order to any intermodal equipment provider whose intermodal chassis substantially increase the likelihood of serious injury or death if not taken out of service immediately, consistent with its treatment of motor carriers. Use of the Imminent Hazard OOS Order is limited to violations of certain FMCSRs (49 CFR parts 385, 386, 390–399, and some of part 383). Such an order is a serious matter and is usually a last resort when a serious safety problem exists that substantially increases the likelihood of serious injury or death and is unlikely to be resolved through any other means available.

FMCSA could issue Imminent Hazard OOS Orders to an intermodal equipment provider's: (1) Specific vehicle; (2) terminal or facility; and/or (3) all equipment tendered by the provider. Where an Imminent Hazard OOS Order is issued, the agency would only impose restrictions necessary to abate the hazard.

FMCSA's goal is to ensure compliance with its regulations and thereby ensure safety. Studies show that compliant companies have lower crash rates, better insurance rates, and pay less for crash related expenses (e.g., cargo damage, legal fees, towing, medical expenses).

Preemption of State Statutes or Regulations

Sections 31151(d) and (e) preempt certain State, political subdivision, and tribal government regulations. In general, the Federal rules would preempt the statutes, regulations, orders, or other requirements of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety if the provisions of those rules exceed or are inconsistent with an FMCSA requirement. If a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers was in effect on January 1, 2005, it would remain in effect only until the effective date of a final rule.

However, a State may request a nonpreemption determination for any requirement for the periodic inspection of intermodal chassis by IEPs that was in effect on January 1, 2005. FMCSA would issue a determination if it is decided that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce. In order to trigger this review, the State must apply to the agency for a determination before the effective date of the final rule. The agency would make a determination with respect to any such application within 6 months after the date on which it is received.

If a State amends a regulation for which it previously received a nonpreemption determination, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the FMCSA may not take effect unless: (1) It is submitted to the agency before the effective date of the amendment; and (2) the FMCSA determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

Relationship Among Intermodal Parties and Allocation of Liability

Section 31151(a)(1) requires that FMCSA issue regulations to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. However, FMCSA believes the statute suggests that the agency should not attempt to allocate liability between parties tendering and using intermodal equipment. Rather than finding fault among intermodal parties or involving the Government in individual disputes (such as who damaged a particular container chassis), the rulemaking would establish programmatic responsibility for intermodal equipment maintenance. The concept is that a

maintenance program would produce safer equipment—safety being in the interest of the traveling public and of the government.

The definition of ''intermodal equipment interchange agreement'' in Section 31151(f)(2) is ''the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities *and liabilities* of both parties with respect to the interchange of the intermodal equipment.'' [Emphasis added]

Neither the section 31151 language nor this proposal would relieve motor carriers of liability for damage they may inflict on intermodal container chassis. This proposed rulemaking would likely reduce the likelihood of crashes attributed to the mechanical condition and roadability of intermodal container chassis, but it would not involve the Department unnecessarily in the commercial relations or allocation of liability between intermodal parties.

International Implications

Because section 31151 was codified in subchapter III of chapter 311 of title 49, United States Code, the jurisdictional definitions in 49 U.S.C. 31132 apply. The term ''United States'' is defined in § 31132(10) as ''the States of the United States and the District of Columbia.'' Section 31151 does not address the question of its own geographical reach, so it must be read as limited to the United States, as defined in section 31132(10). This means that intermodal equipment providers (IEPs) tendering equipment to motor carriers in Puerto Rico, the Virgin Islands or any other U.S. territory are not directly subject to the requirements of this rule. Nonetheless, any jurisdiction that adopts the relevant portions of the FMCSRs as territorial law would have the authority to enforce them. There is also a strong presumption against extra-territorial application of a statute. Nothing in the language or legislative history of section 31151 suggests that Congress intended to make it applicable outside the territory of the United States. Therefore, IEPs tendering equipment to motor carriers in Canada, Mexico, or Central America would not be subject to the requirements of this rule, even if the motor carrier immediately transports the container/chassis combination across the border into this country. Once in the U.S., however, the intermodal equipment would be subject to these proposed rules, including marking requirements and to existing equipment-related FMCSRs. Enforcement would be taken against a motor carrier pulling an unmarked or defective chassis, even if the chassis originated with an IEP physically located outside the United States.

IEPs physically outside the United States, as defined in section 31132(10), are not required by this proposed rule to: (1) File a Form MCS–150C; (2) have a systematic inspection, repair and maintenance program; (3) create a repair lane for defects discovered by the driver just before leaving the terminal; or (4) maintain a system for receiving reports of defects and deficiencies from drivers returning intermodal equipment. FMCSA cannot conduct roadability reviews of IEPs based in foreign countries or non—''United States'' territories (because they are not subject to the rules), prohibit such IEPs from tendering defective equipment to motor carriers (because that occurs beyond the jurisdiction of FMCSA), or issue them civil penalties for failure to comply with these rules.

On the other hand, any intermodal equipment operated in interstate commerce in the United States must be marked with a USDOT number or other unique identifier. Otherwise, the motor carrier pulling the chassis/container combination would have violated these proposed regulations. As motor carriers are unlikely to accept the risk of fines for transporting unmarked chassis, foreign or non-—''United States'' IEPs that know their equipment will operate within the United States may find it necessary, for business reasons, to file a Form MCS–150C and mark their equipment. FMCSA will accept registration applications from such entities and issue them USDOT numbers or other unique identifiers. In these cases, however, the assignment of an identifying number does not amount to an assertion of jurisdiction over the foreign or non—United States IEP. Doing so, however would not subject such IEPs to FMCSA jurisdiction beyond the borders of the United States, so the purpose of the identifying number could not be fully realized.

The challenge for the agency is to maximize the benefits of section 31151 and these proposed rules—when non—''United States'' IEPs tender equipment that subsequently travels in the United States—without exceeding the agency's statutory authority or the principles of international law. FMCSA solicits comments on all aspects of this problem.

III. Analysis of Safety Data

Analysis of Roadside Inspection Data in 4 States

FMCSA asked the John A. Volpe National Transportation Systems Center (Volpe) to conduct a special study of roadside inspection results for container chassis. Inspections can be of several types, ranging from full or walk-around inspections (Levels 1 and 2) to vehicle-only inspections (Level 5). The type of unit inspected is indicated by a code and the types of violations found may be categorized as driver violations, vehicle violations (such as defects in brakes, tires or lights), or hazardous material violations. The Volpe analyses covered results from Level 1, 2, or 5 inspections, and for ''Unit 2'' in tractor-semitrailer combinations, the type of vehicle being inspected had to be coded as a semitrailer (code 9). ''Unit 2'' refers to the semitrailer in a power unit-semitrailer combination. Out-of-service (OOS) and violation rates were calculated using FMCSA's Motor Carrier Management Information System (MCMIS) inspection data on ''Unit 2'' vehicles. That is, the data came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations.

Results of the Volpe study are summarized here; the complete report is available in the docket for this NPRM.

The analysis of roadside inspection safety data included two phases. The first phase included a Four-State Analysis. The study team obtained intermodal inspection data from four States—California, Louisiana, South Carolina, and Texas—that have procedures for collecting and maintaining intermodal roadside inspection data at the State level and that have adopted container chassis roadability legislation. The data obtained were for the calendar years 2000 through part of 2003.

The Four-State Analysis results presented in Table 1 show, for each of the four reporting States, the total number of Level 1, 2, and 5 roadside inspections, and the OOS rates for non-intermodal semitrailers and intermodal semitrailers (*i.e.*, Unit 2). Vehicle OOS violations represent the most serious types of FMCSR violations found on the vehicle, or those violations FMCSA believes are most likely to result in a crash.

TABLE 1.—OUT-OF-SERVICE (OOS) RATES OF NON-INTERMODAL AND INTERMODAL SEMITRAILERS FOR THE FOUR-STATE ANALYSIS (2000–2003)

State	Unit 2—Semitrailers					
	Non-intermodal (NI)		Intermodal (I)		Difference in OOS rate (I–NI)	Percent difference in OOS rate (I–NI)/NI
	Number of inspections	OOS rate (percent)	Number of inspections	OOS rate (percent)		
CA[1]	875,881	14.6	33,523	17.7	3.1	21.2
LA[2]	27,216	8.8	76	26.3	17.5	198.9
SC[1]	60,674	14.9	1,982	21.4	6.5	43.6
TX[2]	150,260	16.1	2,032	24.8	8.7	54.0

[1] Data for 2000–2002 and part of 2003.
[2] Data for 2002 only.
Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

The researchers noted that in each of the four States, the OOS rate for intermodal semitrailers was higher than the OOS rate for non-intermodal semitrailers. The percentage difference between the non-intermodal and intermodal semitrailer OOS rates in each State was more than 20 percent, with intermodal container chassis being in worse mechanical condition than other types of semitrailers. Table 2 shows, for each of the four States, the total number of Level 1, 2, and 5 roadside inspections and the percentages of non-intermodal and intermodal semitrailer (i.e., Unit 2) inspections with vehicle violations. Note that the violation totals represented in Table 3 include all violations (i.e., not just OOS but also non-OOS violations) found on the trailing unit.

TABLE 2.—TOTAL VIOLATION RATES OF NON-INTERMODAL AND INTERMODAL SEMITRAILERS FOR THE FOUR-STATE ANALYSIS (2000–2003)

State	Unit 2—Semitrailers					
	Non-intermodal (NI)		Intermodal (I)		Difference in violation rate (I–NI)	Percent difference in violation rate (I–NI)/NI
	Number of inspections	Total violation rate (percent)	Number of inspections	Total violation rate (percent)		
CA[1]	875,881	32.8	33,523	32.8	0.0	0.0
LA[2]	27,216	28.2	76	43.4	15.2	53.9
SC[1]	60,674	38.7	1,982	38.9	0.2	0.5
TX[2]	150,260	60.9	2,032	55.8	−5.1	−8.4

[1] Data for 2000–2002 and part of 2003.
[2] Data for 2002 only.
Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

Table 2 shows that in California and South Carolina, the percentages of non-intermodal and intermodal semitrailers with vehicle violations were the same or nearly the same. In Texas, the percentage of non-intermodal semitrailers with vehicle violations was 5.1 percentage points higher than the percentage of intermodal semitrailers with vehicle violations. In Louisiana, the percentage of intermodal semitrailers with vehicle violations was 15.2 percentage points higher than the percentage of non-intermodal semitrailers with vehicle violations. However, FMCSA recognizes the limited number of Louisiana intermodal trailer inspections (only 76 inspections compared to 1,982 inspections in South Carolina, 2,032 inspections in Texas, and 33,523 inspections in California) on which to base this comparison.

The roadside inspection data from Texas contain a code that identifies the type of intermodal container chassis ownership: carrier owned or non-carrier-owned. The OOS and ''all'' violation analyses were re-run to compare the results for these two groups. Table 3 shows the OOS rates for carrier-owned and non-carrier-owned intermodal container chassis for inspections performed in Texas. Table 3 shows the total (or ''all'') vehicle violation rates for carrier-owned and non-carrier-owned intermodal container chassis for inspections performed in Texas.

Table 3 shows that the non-carrier-owned intermodal semitrailers (i.e., container semitrailers tendered by equipment providers) had an OOS rate of 25.3 percent compared to an OOS rate of 19.2 percent for the carrier-owned intermodal semitrailers. Table 4 shows that 55.7 percent of the non-carrier-owned intermodal semitrailers had vehicle violations compared to 57.5 percent of the carrier-owned intermodal semitrailers.

While FMCSA has examined both total violation rates and OOS rates, it is the OOS rate FMCSA focuses on in this proposed rule because that rate is based on the most serious violations of the FMCSRs. These violations are listed in the Commercial Vehicle Safety Alliance's (CVSA) North American Uniform Out-of-Service Criteria, a set of enforcement tolerances used by Federal, State, and Provincial agencies conducting commercial motor vehicle inspections in theUnited States, Canada, and Mexico.

TABLE 3.—OUT-OF-SERVICE (OOS) RATES OF CARRIER-OWNED AND NON-CARRIER-OWNED INTERMODAL SEMITRAILERS IN TEXAS (2002)

State	Unit 2—Semitrailers					
	Non-carrier-owned (NCO) intermodal		Carrier-owned (CO) intermodal		Difference in OOS rates (NCO–CO)	Percent difference in OOS rates (NCO–CO)/CO
	Number of inspections	OOS rate (percent)	Number of inspections	OOS rate (percent)		
TX	1,865	25.3	167	19.2	6.1	31.8

Note: The data in this table came from Level 1, 2, and 5 inspections of the non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

TABLE 4.—TOTAL VIOLATION RATES OF CARRIER-OWNED AND NON-CARRIER-OWNED INTERMODAL SEMITRAILERS IN TEXAS (2002)

State	Unit 2—Semitrailers					
	Non-carrier-owned (NCO) intermodal		Carrier-owned (CO) intermodal		Difference in violation rates (NCO–CO)	Percent difference in violation rates (NCO–CO)/CO
	Number of inspections	Vehicle violation rate (percent)	Number of inspections	Vehicle violation rate (percent)		
TX	1,865	55.7	167	57.5	−1.8	−3.1

Note: The data in this table came from Level 1, 2, and 5 inspections of non-intermodal and intermodal semitrailers, but not the tractors involved. All violations were vehicle violations (violation categories 15–30).

The second phase of this analysis used data collected during roadside inspections conducted during an intensive annual activity known as RoadCheck. FMCSA requested that States conduct inspections of intermodal equipment, where possible and appropriate, as part of the focus of International RoadCheck 2004 (conducted beginning in June 2004).[2]

Table 5 shows the RoadCheck 2004 inspection totals and out-of-service rates compared to the Four-State Analysis inspections.

TABLE 5.—COMPARISON OF NON-INTERMODAL VS. INTERMODAL OUT-OF-SERVICE (OOS) RATES

Analysis	Non-Intermodal			Intermodal		
	Number of inspections	OOS rate (percent)		Number of inspections	OOS rate (percent)	
		Tractors	Semitrailers		Tractors	Semitrailers
RoadCheck Inspections	312,751	11.3	18.0	4,038	17.3	22.1
Four-State Inspections	1,114,029	13.7	14.7	37,615	16.4	18.3

Note: RoadCheck inspection data are cross-section data obtained from 38 States from June 1 through September 23, 2004, except for California where data had been collected in June 1–23 only. Four-State inspection data were time-series data collected from 2000 through part of 2003 in four States—California, Texas, South Carolina, and Louisiana.

Table 5 shows that the OOS rates for intermodal equipment—both tractors and semitrailers—are consistently higher than the OOS rates for commercial motor vehicles hauling non-intermodal semitrailers. This suggests that intermodal container chassis are more likely to be operated in an unsafe mechanical condition than non-intermodal semi-trailers

As part of RoadCheck 2004, FMCSA also asked inspectors to identify the ownership of intermodal container chassis at the time of the vehicle inspection.[3] Table 6 summarizes OOS rates by container chassis ownership.

TABLE 6.—INTERMODAL OUT-OF-SERVICE (OOS) RATE BY TYPE OF CHASSIS OWNERSHIP

Type of chassis owners	Number of inspections	Tractors		Semitrailers/Chassis	
		Number of OOS inspections	OOS rate (percent)	Number of OOS inspections	OOS rate (percent)
Motor Carrier	94	21	22.3	16	17.0
Leased	191	45	23.6	54	28.3

[2] Detailed analysis of the RoadCheck Inspection Data collected in MCMIS, included in the RIA, is provided in Docket FMCSA–2005–23315.

[3] Volpe Center, ''Feasibility Study on Collecting Intermodal Chassis Crash and Inspection Data,'' prepared for FMCSA, September 29, 2004.

TABLE 6.—INTERMODAL OUT-OF-SERVICE (OOS) RATE BY TYPE OF CHASSIS OWNERSHIP—Continued

Type of chassis owners	Number of inspections	Tractors		Semitrailers/Chassis	
		Number of OOS inspections	OOS rate (percent)	Number of OOS inspections	OOS rate (percent)
Shipper	167	41	24.6	33	19.8
Railroads	68	21	30.9	20	29.4
Unknown	150	17	11.3	47	31.3
Total	670	145	21.6	170	25.4

While data in Table 6 are relatively limited, they do show that intermodal container chassis owned by motor carriers have lower OOS rates than intermodal container chassis owned by all other non-motor carriers.

While the total number of violations cited per inspection for intermodal container chassis may be comparable to the total number of violations per inspection of non-intermodal semitrailers, the data indicate the defects or deficiencies observed on intermodal container chassis are likely to be more severe than those noted on non-intermodal semitrailers (or those violations resulting in vehicle OOS orders). Therefore, it appears intermodal container chassis are, as a group of commercial vehicles, more likely to be in need of repairs than other types of semitrailers, and that the defects and deficiencies are more likely to be of the type that are likely to cause a crash or breakdown of the vehicle.

Roadside Inspection Violation Data Analysis

All Intermodal Container Chassis Violations

FMCSA examined the violations cited during intermodal container chassis inspections to determine what specific problems were being found during the inspections and whether it is likely a driver could have detected them if they were present when the driver picked up the container chassis.

Table 7 shows the most frequently cited violations in the inspection records of the four States' data. The most common violation was ''Inoperable Lamp (Other than Head/Tail),'' which accounted for 25.4 percent of all violations. Combined with other lamp/light violations, they account for 34.0 percent of all violations. Tire-related violations account for 12.2 percent of all violations. Violations that can be readily detected by the driver, including those that are lamp/light and tire-related, account for more than half of all the violations cited for intermodal container chassis.

TABLE 7.—DISTRIBUTION OF INTERMODAL SEMITRAILER VIOLATIONS (2000–2003)

Unit 2—Intermodal semitrailers

Violation		Rank	Count	Percent of total
Code	Description			
393.9	Inoperable lamp (other than head/tail) [3]	1	4,909	25.4
396.3(a)(1)	Inspection/Repair and Maintenance [2]	2	4,688	24.3
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3]	3	1,950	10.1
393.47	Inadequate brake lining for safe stopping [2]	4	1,315	6.8
393.11	No/defective lighting devices/reflectors/projected [3]	5	885	4.6
393.100(e)	Improper securement of intermodal containers [3]	6	593	3.1
396.3(a)(1)BA	Brake—Out of adjustment [1]	7	486	2.5
393.201(a)	Frame cracked/broken/bent/loose [3]	8	446	2.3
393.45(a)(4)	Brake hose/tubing chafing and/or kinking [2]	9	407	2.1
393.70	Fifth wheel [3]	10	407	2.1
393.207(c)	Leaf spring assembly defective/missing [2]	11	396	2.1
393.25(f)	Stop lamp violations [3]	12	371	1.9
393.50	Inadequate reservoir for air/vacuum brakes [1]	13	283	1.5
393.19	No/defective turn/hazard lamp as required [3]	14	245	1.3
393.75(a)(1)	Tire—Ply or belt material exposed [3]	15	227	1.2
393.75(b)	Tire—Front tread depth less than 4/32 of inch [3]	16	176	0.9
393.48(a)	Inoperative/defective brakes [1]	17	175	0.9
393.205(c)	Wheel fasteners loose and/or missing [3]	18	159	0.8
393.9T	Inoperable tail lamp [3]	19	152	0.8
396.17(c)	Operating a CMV without periodic inspection [3]	20	120	0.6
	Subtotal—Top 20 Violations	.....	18,390	95.3
	Other Violations	.....	905	4.7
	Total—All Violations	.....	19,295	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Violations involving defects or deficiencies that drivers were unlikely to detect during a visual inspection account for only 7 percent of all violations on intermodal container chassis in the four States. The remaining 93 percent of violations are either items the driver could have observed during a visual inspection of the container chassis, or are under further study by FMCSA to determine the likelihood of the driver being able to detect the defect or deficiency.

Intermodal Container Chassis Violations by State

California dominates the results in the previous section because of the number of inspections performed by that State. However, significant differences were evident in the types of violations cited from State to State. As Table 8 shows, the violation described as ''Inspection/Repair and Maintenance'' represented 31.0 percent of all violations cited in California. On the other hand, lamp problems were the predominant problems in all the other States, accounting for 47.5 percent of violations in Texas, 45.7 percent in South Carolina, and 57.8 percent in Louisiana.

The second most frequently cited violation in Louisiana and South Carolina was the ''Improper Securement of [an] Intermodal Container,'' while for Texas, the second most frequently cited violations were brake-related issues.

The third most frequently cited violations in Louisiana and South Carolina were brake-related issues, while for Texas it was ''Improper Securement of [an] Intermodal Container.'' California's violations were somewhat unique among the four States, as only three of their top ten violations were items drivers could have detected during a visual inspection of the container chassis. It is possible that violation code differences among the States account for some of the variability in specific defects or deficiencies listed.

TABLE 8.—INTERMODAL SEMITRAILER VIOLATIONS BY STATE (CA, LA, SC, AND TX) DURING 2000–2003

Unit 2—Intermodal semitrailer violations					
Violation		Percent of total violations in state			
Code	Description	CA	LA	SC	TX
393.9	Inoperable lamp (other than head/tail) [3]	30.3	19.7	24.2	
396.3(a)(1)	Inspection/Repair and Maintenance [2]	31.0	.....	3.6	
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3]	11.9	3.9	5.2	3.4
393.47	Inadequate brake lining for safe stopping [2]	8.7			
393.11	No/defective lighting devices/reflectors/projected [3]	.....	26.3	4.0	28.8
393.100(e)	Improper securement of intermodal containers [3]	.....	.....	11.4	14.7
396.3(a)(1)BA	Brake—Out of adjustment [1]	1.3	6.6	3.8	8.1
393.201(a)	Frame cracked/broken/bent/loose [3]	3.0			
393.45(a)(4)	Brake hose/tubing chafing and/or kinking [2]	.....	1.3	7.4	7.6
393.70	Fifth wheel [1]	2.7			
393.207(c)	Leaf spring assembly defective/missing [2]	2.6			
393.25(f)	Stop lamp violations [3]	.....	10.5	8.2	8.3
393.50	Inadequate reservoir for air/vacuum brakes [1]	1.9			
393.19	No/defective turn/hazard lamp as required [3]	.....	.....	4.0	6.5
393.75(a)(1)	Tire—Ply or belt material exposed [3]	1.4			
393.48(a)	Inoperative/defective brakes [1]	.....	1.3		
393.205(c)	Wheel fasteners loose and/or missing [3]	.....	1.3		
393.9T	Inoperable tail lamp [3]	.....	1.3	5.3	2.3
396.17(c)	Operating a CMV without periodic inspection [3]	.....	1.3	.....	2.3
393.75(a)	Flat tire or fabric exposed [3]	.....	1.3		
393.20	No/improper mounting of clearance lamps [3]	.....	.....	.....	1.6
393.102	Improper securement system (tiedown assemblies) [3]	.....	21.1		
393.207(a)	Axle positioning parts defective/missing [2]	.....	1.3		
393.28	Improper or no wiring protection as required [3]	.....	2.6		
	Total—Top 10 Violations	94.9	100.0	77.2	83.6
	Other Violations	5.1	0.0	23.8	16.4
	All Violations	100.0	100.0	100.0	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Vehicle Out-of-Service Violations by State

Table 9 shows the top ten OOS violations for intermodal semitrailers in the four States. Similar to all violations in the previous section, the most frequently cited OOS violations were readily detectable by the driver, but the patterns of individual violations differed among the four States. In California, ''Inoperable Lamp (Other than Head/Tail),'' a violation a driver could easily discover, accounted for almost 49 percent of the OOS violations in the State, and ''Inspection/Repair and Maintenance,'' a violation that the driver would be less likely to discover, accounted for almost 22 percent of the OOS violations.

In the other three States, the most frequently cited type of OOS violation is one that could readily be detected by the driver; namely, proper securement of containers and loads. Specifically, these violations accounted for 61.5 percent of Louisiana violations, 33.3 percent of South Carolina violations, and 40.0 percent of Texas violations. The second most frequently cited type of violation in these three States was also readily detectable by the driver: Lamp-related violations. In these three

States, lamp-related violations accounted for 26.9 percent of Louisiana violations, 46.5 percent of South Carolina violations, and 38.9 percent of Texas violations.

Problems with securing containers and loads are not evident among the top ten California violations. During a January 2004 field trip to the Los Angeles area,[4] FMCSA staff and Volpe researchers determined California inspectors use the ''Inspection/Repair and Maintenance'' violation to cover miscellaneous items, such as cracked windshields, and not necessarily improperly secured containers and loads. Further investigation is required to determine why container securement is not identified as a separate issue in California, as it is in the other States.

TABLE 9.—INTERMODAL SEMITRAILER OOS VIOLATIONS IN CA, LA, SC, AND TX DURING 2000–2003

Unit 2—Intermodal semitrailer OOS violations					
Violation		Percent of total violations in state			
Code	Description	CA	LA	SC	TX
393.9	Inoperable lamp (other than head/tail) [3]	48.8	7.7	22.2	
396.3(a)(1)	Inspection/Repair and Maintenance [2]	21.8		2.2	1.0
393.75(c)	Tire—Other tread depth less than 2/32 of inch [3].	9.9			1.1
393.47	Inadequate brake lining for safe stopping [2]	6.1			
393.11	No/defective lighting devices/reflectors/projected [3].		11.5		
393.100(e)	Improper securement of intermodal containers [3].			28.3	39.0
396.3(a)(1)BA	Brake—Out of adjustment [1]	1.4	3.8	1.9	6.8
393.201(a)	Frame cracked/broken/bent/loose [3]	1.8			
393.70	Fifth wheel [1]	2.7			
393.207(c)	Leaf spring assembly defective/missing [2]	3.0			
393.25(f)	Stop lamp violations [3]		7.7	12.4	16.5
393.50	Inadequate reservoir for air/vacuum brakes [1]	0.9			
393.19	No/defective turn/hazard lamp as required [3]			7.9	20.8
393.75(a)(1)	Tire—Ply or belt material exposed [3]	1.0			
393.48(a)	Inoperative/defective brakes [3]				1.9
393.9T	Inoperable tail lamp [3]			4.0	1.6
393.75(a)	Flat tire or fabric exposed [3]		3.8	1.9	1.0
393.100	No or improper load securement [3]			5.0	1.0
393.75(a)(3)	Tire—Flat and/or audible air leak [3]			2.4	3.1
393.102	Improper securement system (tiedown assemblies) [3].		61.5		
393.207(b)	Adjustable axle locking pin missing/disengaged [3].				1.0
393.207(a)	Axle positioning parts defective/missing [2]		3.8		
	Total—Top 10 OOS Violations	96.5	100.0	88.1	94.7
	Other Violations	3.5	0.0	11.9	5.3
	All Violations	100.0	100.0	100.0	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

Table 10 contains results from FMCSA's analysis of inspection of intermodal container chassis during RoadCheck 2004. RoadCheck 2004 inspection analysis found that the most frequently cited OOS violation was ''Brakes out of adjustment,'' which accounts for 15.3 percent of all violations. ''Inoperable lamp'' was second, accounting for 11.6 of all OOS violations. Brake-related violations accounted for 35.3 percent of all OOS violations, while light-related violations accounted for 31.4 percent of the total. Load securement violations accounted for 18.6% of all violations, while tire-related violations accounted for 7.5 percent of all violations.

TABLE 10.—OOS VIOLATIONS IN INSPECTIONS OF INTERMODAL CHASSIS ROADCHECK 2004 ANALYSIS

Unit 2—Semitrailers				
Violation		Rank	Count	Percent of total
Code	Description			
396 3A1BA	Brake—Out of adjustment [1]	1	41	15.3
393 9	Inoperable lamp (other than head/tail) [3]	2	31	11.6
393 19	Failing to Equip Vehicle with Operative Turn Signal(s) [3]	3	30	11.2
393 48(a)	Failing to Equip Vehicle with Operative Brakes [1]	4	25	9.3

[4] Volpe Center and FMCSA representatives visited the Ports of Los Angeles and Long Beach, CA, guided by members of the California Highway Patrol from January 21–22, 2004.

TABLE 10.—OOS VIOLATIONS IN INSPECTIONS OF INTERMODAL CHASSIS ROADCHECK 2004 ANALYSIS—Continued

Unit 2—Semitrailers				
Violation		Rank	Count	Percent of total
Code	Description			
393 100(e)	Improper Securement of Intermodal Containers [3]	5	25	9.3
393 126	No/improper intermodal container securement [3]	6	25	9.3
396 3A1B	Brakes (General) [2]	7	21	7.8
393 25(f)	Stop Lamp Violations [3]	8	20	7.5
396 3(a)(1)	Failing to inspect vehicle for safe operation [2]	9	8	3.0
393 75(a)(3)	Tire—Flat and/or audible air leak [3]	10	5	1.9
393 47	Inadequate/Contaminated Brake Linings [2]	11	4	1.5
393 75(a)	Operating with tires having fabric or cords exposed [3]	12	4	1.5
393 75(a)(1)	Tire—Ply or belt material exposed [3]	13	4	1.5
393 75(f)	Tire—Load Weight rating/under inflated [3]	14	4	1.5
393 75(a)(4)	Tire—Cut Exposing ply and/or belt material [3]	15	3	1.1
393 9T	Inoperable tail lamp [3]	16	3	1.1
396 3A1BL	Brake-reserve system pressure loss [3]	17	2	0.7
393 207(a)	Operating Vehicle with Defective/Misaligned Axle or Axle parts [1].	18	2	0.7
393 50	Inadequate Reservoir for Air/Vacuum Brakes [1]	19	2	0.7
393 207(b)	Operating Vehicle with Adj. Axle Assy. With locking Pin Defects [3].	20	2	0.7
	Subtotal—Top 20 Violations	.....	261	97.4
	Total Vehicle Violations on Level 1, 2, 5 Inspections	.....	268	100.0

[1] Violation not readily detectable by driver.
[2] Violation sometimes detectable by driver or needs more study.
[3] Violation generally detectable by driver.

National Inspection Data—Violations for Calendar Year 2003

In addition to examining roadside inspection data from California, Louisiana, South Carolina, and Texas, FMCSA reviewed inspection results for motor carriers that identified themselves on the Motor Carrier Identification Report (Form MCS–150) as engaged in intermodal operations only, and those engaged in intermodal operations as one of their primary operations. The data for these categories of carriers was compared with data for all motor carriers.

There are 641 motor carriers that indicate the only type of activity they engage in is intermodal operations. There are 12,032 motor carriers that include the intermodal operations entry as one of the types of transportation activity they engage in. The total number of motor carriers is greater than 685,000. However, FMCSA analysts believe the number of truly ''active'' motor carriers is probably less than 500,000 (*i.e.*, those currently moving freight or passengers, operating under their own authority and with required filings on record with FMCSA).

Table 11 data show a small difference (2 percent) between the OOS rate for semitrailers being transported by motor carriers in all types of operations and semitrailers being transported by motor carriers involved in both intermodal and non-intermodal operations. However, there is a significant difference between the semitrailer OOS rates for motor carriers engaged exclusively in intermodal operations versus those with combined operations and all motor carriers. The semitrailer OOS rate for intermodal-only operations was 25 percent. The semitrailer OOS rate for motor carriers engaged in intermodal operations combined with some other type of operation(s) was 15 percent. The semitrailer OOS rate for all motor carriers was 13 percent.

The nationwide data from FMCSA's MCMIS suggest the mechanical condition of intermodal container chassis operated by the motor carriers typically selected for roadside inspections is significantly worse than the semitrailers operated by motor carriers in all types of operations. Although there are huge differences in the population size of intermodal-only motor carriers versus all motor carriers, and the total number of vehicle inspections conducted on intermodal-only carriers versus all other motor carriers, FMCSA cannot ignore the disparity in the condition of the vehicles.

TABLE 11.— OUT-OF-SERVICE (OOS) RATES OF ALL AND INTERMODAL-ONLY CARRIERS; DATA FROM THE MOTOR CARRIER MANAGEMENT INFORMATION SYSTEM (MCMIS) CY–2003

Commodity segment	Number of vehicle inspections CY2003	No. of vehicle inspections with 1 or more OOS violations		Percent OOS rate	
		Unit 1 (tractor)	Unit 2 (semitrailer)	Unit 1 (tractor)	Unit 2 (semitrailer)
Intermodal Only (n=641)	2,894	519	725	18	25
Intermodal + Other (n=12,032)	145,377	15,963	22,428	11	15
All Motor Carriers (n=>500,000)	1,476,245	135,000	186,073	9	13

Source: Motor Carrier Management Information System (MCMIS), MCMIS Staff, Run Date—April 29, 2004.

FMCSA's Analysis of the Data

FMCSA believes the data suggest that the percentage of intermodal container chassis being operated in unsafe mechanical condition is likely to be greater than the percentage of non-intermodal semitrailers in unsafe operating condition, based on the inspection data obtained from CA, LA, SC, and TX as part of the Four-State Analysis and the inspection data analyzed as part of the RoadCheck 2004 safety data analysis. While the number of violations cited per inspection for intermodal container chassis may be comparable to the number of violations per inspection of non-intermodal semitrailers, the data indicate the defects or deficiencies observed on intermodal container chassis are likely to be more severe than those noted on non-intermodal semitrailers. Thus, it appears intermodal container chassis are, as a group of commercial vehicles, more likely to be in need of repairs than other types of semitrailers.

Container chassis, as a vehicle type, should not be considered inherently unsafe. Data from Texas concerning inspection results segregated by ownership suggest that container chassis controlled by motor carriers are better maintained than container chassis offered by IEPs to motor carriers. FMCSA's primary safety concern is with the container chassis offered by IEPs, because the agency's research indicates that these chassis do not appear to be covered by inspection, repair, and maintenance programs comparable to those of motor carriers that control their own intermodal equipment, or motor carriers responsible for maintaining other types of semitrailers.

While there is very limited information to determine the extent to which the mechanical condition of intermodal container chassis may contribute to crashes, the data suggest that it is more likely than not that current maintenance practices of many IEPs do not ensure container chassis are in safe and proper operating condition at all times on the highways. Further, the types of defects or deficiencies found on such container chassis during roadside inspections are often so severe the vehicle must be placed OOS. It must be acknowledged, however, that a very high percentage of these violations could have been detected by drivers, had they made—or had the opportunity to make—an adequate visual inspection before leaving the intermodal facility.

Regardless of the lack of crash data on a national level, the information reviewed to date is cause for concern. The Volpe Center, in a 2004 analysis conducted for FMCSA using the FMCSA Roadside Intervention Model, estimated that 55.6 percent of all the CMV crashes avoided as a result of roadside interventions (i.e., roadside inspections and traffic enforcement stops) in 2003 were attributable to the vehicle violations found at the time of the inspection. More recent study has highlighted the role of the driver among crash-related factors. It is clear, though, that attention to equipment condition yields safety benefits. In addition to our continued focus on the driver, FMCSA believes that action should be taken to reduce, to the greatest extent practicable, potential future crashes caused by the mechanical condition of the intermodal container chassis. This rulemaking would also ensure that intermodal container chassis meet the same level of safety as other semitrailers operated in interstate commerce.

IV. Estimated Number of Equipment Providers and Intermodal Container Chassis

Equipment Providers

Container chassis are specialized truck trailers with twist locks. An intermodal container chassis is a reusable asset of its owner. The chassis can belong to virtually any participant in the transportation or logistics chain: (1) Carriers, including ocean shipping lines, railroads, and trucking companies; (2) equipment leasing companies; and (3) shippers. FMCSA estimates that there are 108 non-motor-carrier intermodal equipment providers, consisting of 93 steamship lines, 5 railroads, and 10 container chassis pool operators.[5]

According to the Intermodal Association of North America (IANA), there are 5,500 motor carriers and 65 IEPs that are signatories to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), representing approximately 90 percent of the intermodal movements.[6] Furthermore, MCMIS contains information on the motor carriers that identify themselves on the Motor Carrier Identification Report (FMCSA Form MCS–150) as engaging in intermodal operations only, as well as those that include intermodal operations as one of their primary operations, and all other motor carriers. As stated previously, the MCMIS database indicates there are 12,032 motor carriers that included intermodal cargo as one of the cargo types they may carry.

Given that, according to the IANA database, about 5,500 motor carriers are signatories of UIIA, this analysis assumes that about 46 percent of the 12,032 motor carriers in MCMIS, or about 5,600 motor carriers, are engaged in intermodal cargo container operations as a primary operation. Only some of these carriers own or otherwise control (i.e., lease) intermodal container chassis or trailers. In response to FMCSA's survey questionnaire regarding operational characteristics of intermodal tractor-trailers, three out of nine motor carriers (or one-third), suggested that they owned, leased, or otherwise controlled intermodal container chassis for extended periods of time (i.e., beyond one trip). Therefore, FMCSA assumes that one-third of the 5,600 motor carriers engaged in intermodal cargo container operations, or about 1,900 motor carriers, actually own or lease/control intermodal container chassis.

It is difficult to obtain precise estimates of the size and scope of national intermodal container chassis operations. There is no census or database of intermodal container chassis providers that is comparable to FMCSA's MCMIS Census File of motor carriers, which provides not only the name and location of each motor carrier, but also its size, as measured by the number of power units. Therefore, the number of IEPs has been estimated using a combination of MCMIS, IANA, and ATA reports, as well as information obtained from port authority and railroad Web sites. However, FMCSA believes that the 1,900 motor carriers that own intermodal container chassis are already subject to systematic maintenance requirements and would not incur any additional cost burden due to the proposed rule.

Intermodal Container Chassis Population

Information on the number of intermodal container chassis owned by the various equipment owners/providers was as difficult to obtain as the number of intermodal container chassis providers. Based on articles in the motor carrier trade press, FMCSA estimates that there are between 750,000 and 800,000 container chassis in service. According to the Institute of International Container Lessors (IICL) Annual Chassis Fleet Survey,[7] IICL members owned approximately 320,000

[5] The number of equipment providers is estimated from information in the Containerization International Yearbook 2004 for 99 port terminals in the United States. The number of steamship lines is estimated from the direct call liner services at the terminal level.

[6] *http://www.intermodal.org/Assn* Initiatives.html.

[7] *http://www.iicl.org/PDF%20Docs/16thFleetSurveyChassis.pdf.*

container chassis in 2004. According to the IICL, member companies own almost 40 percent of the world's container chassis, as well as own and lease a high percentage of the U.S. container chassis fleet.[8] To be conservative, FMCSA estimates that there are approximately 850,000 intermodal container chassis currently in operation in the United States.

Based on the IICL data on intermodal container chassis, FMCSA assumes the estimated 10 container chassis pool operators control about 38 percent, or 320,000 container chassis. Therefore, this NPRM assumes that steamship lines, railroads, and motor carriers currently own about 530,000 intermodal container chassis in operation in the United States.

Through its surveys of intermodal equipment providers, FMCSA obtained information on about 281,100 intermodal container chassis, or roughly 53 percent of the total number of intermodal container chassis owned by members of the Ocean Carrier Equipment Management Association (OCEMA), Association of American Railroads (AAR), and American Trucking Associations.[9] Based on the information from the three industry associations, about 80 percent of the reported 281,100 intermodal container chassis are owned by the steamship lines, 20 percent are owned by railroads, and less than 0.02 percent of the reported 281,100 intermodal container chassis are owned by the motor carriers. Therefore, based on the reported average fleet size of 22 intermodal container chassis per motor carrier, FMCSA believes that the estimated 1,900 motor carriers that own chassis have approximately 41,800 intermodal container chassis. FMCSA then estimates that 80 percent of the rest of the intermodal container chassis (that is, the 488,200 container chassis that are not owned by either equipment lessors or motor carriers), or approximately 392,000 intermodal container chassis, are owned by the steamship lines and approximately 96,200 are owned by the railroads. Table 12 shows the estimated number of container chassis by owner.

TABLE 12.—ESTIMATED NUMBER OF INTERMODAL CHASSIS BY OWNER

Description of entities	Estimated number of affected entities	Estimated number of chassis
Steamship Lines	93	392,000
Railroads	5	96,200
Common-pool Operators/Equipment Lessors	10	320,000
Motor Carriers	1,900	41,800
Total	2,008	850,000

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)

FMCSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and significant under DOT regulatory policies and procedures because of substantial public and Congressional interest concerning the maintenance and roadability of intermodal container chassis and the responsibilities of intermodal equipment providers (IEPs). However, it has been estimated that the economic impact of this proposed rule would not exceed the annual $100 million threshold for economic significance. OMB has reviewed this proposed rule. Improved maintenance is expected to result in fewer out-of-service (OOS) orders and highway breakdowns involving intermodal chassis and improved efficiency of the Nation's intermodal transportation system. To the extent inadequately maintained intermodal chassis are responsible for, or contribute to, crashes, this proposal would also help to ensure that CMV operations are safer, thus reducing the deleterious effect on drivers addressed in section 31136(a)(4). Given the cost results contained in the next section, Estimate of the Compliance Costs for Intermodal Equipment Providers, FMCSA anticipates this rule would not have a significant economic impact on IEPs.

Periodic (annual) inspection is required for every commercial motor vehicle in accordance with current § 396.17.[10] Periodic inspection is intended to complement and be consistent with the more stringent § 393.3 (systematic) inspection, repair, and maintenance (IRM) requirements proposed in the NPRM. Currently, most intermodal container chassis undergo a periodic (annual) inspection. Although existing rules requiring the periodic inspection do not apply directly to IEPs, as a business practice IEPs perform the inspection to ensure motor carriers will accept the chassis. However, many IEPs do not appear to have in place the systematic inspection, repair and maintenance programs (49 CFR 396.3) that provide continuous, on-going oversight of their equipment throughout the year. Therefore, the explicit inclusion of the IEP in § 396.3 of the FMCSRs would make them responsible for compliance with the requirements of applicable statutes and the corresponding regulations.

The proposed amendments to the FMCSRs would explicitly require IEPs to ensure the equipment they tender to motor carriers and drivers complies with the safety requirements in place for other types of trailers operated in interstate commerce. For those equipment providers that have in place systematic inspection, repair, and maintenance programs, including providing the opportunity for CMV drivers to assess the safe operating condition of intermodal container chassis before taking them on the highway and repairing or replacing equipment found to have deficiencies, this proposed rulemaking would impose minimal additional costs. Equipment providers that do not have such systematic programs in place would incur the costs of establishing and maintaining the programs.

[8] *http://www.iicl.org/members.htm.*

[9] For the 3 industry associations, seven out of 18 major ocean common carriers, three out of 5 railroads, and 9 motor carriers responded to a variety of questions regarding chassis ownership and operations.

[10] The term ''commerical motor vehicle'' includes each unit in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

The proposed regulations also address a program for FMCSA to evaluate and audit the compliance of IEPs with those sections of the FMCSRs applicable to them. If FMCSA finds evidence that an IEP is not complying with the regulations concerning intermodal equipment safety, the proposed regulations would allow FMCSA to take appropriate action to bring about compliance with the regulation.

The proposed rule would have some impact upon the responsibilities of drivers and motor carriers. Motor carriers would continue to bear responsibility for the safe operation of equipment in their control on the highways and for the systematic IRM of all motor vehicles, including intermodal equipment, under their control for 30 days or more. Drivers would continue to be responsible for assessing the safe operating condition of the CMVs they will drive (§ 392.7 and § 396.13), and to note and report on defects or deficiencies that could affect the CMV's safety of operation or result in a mechanical breakdown (§ 396.11). IEPs would need to acknowledge receiving that information, and must either repair the equipment or provide a replacement chassis. However, IEPs and their agents may also request FMCSA to undertake an investigation of a motor carrier that is alleged to not be in compliance with regulations issued under the authority of 49 U.S.C. 31151.

Excluding potential costs associated with systematic IRM (§ 396.3) requirements, FMCSA estimates equipment providers' costs to comply with the proposed information collection and recordkeeping requirements would be modest, because the requirements would be limited in scope (filing the Identification Form MCS–150C, marking intermodal equipment with the provider's USDOT number or other identifying number unique to that provider, and complying with recordkeeping requirements associated with equipment inspection, repair, and maintenance).

The economic benefits of this rule are estimated to include (1) safety benefits from avoiding crashes involving intermodal equipment, and (2) efficiency benefits resulting from a reduction in vehicle OOS orders on intermodal chassis, wait times for truckers to receive chassis, and other changes in chassis operations that improve productivity.

The sections below provide details on the estimated costs and benefits of this proposed rule.

Estimated Compliance Costs for Intermodal Equipment Providers

Potential costs considered as a result of this proposed rule include the following:

- Filing Intermodal Equipment Provider Identification Report (Form MCS–150C);
- Displaying a unique USDOT number or other identification number on each chassis;
- Establishing a systematic inspection program, and a repair and maintenance program to ensure the safe operating condition of each chassis;
- Maintaining documentation of the inspection program; and
- Establishing a reporting system for defective and deficient equipment.

When considering costs of the proposed rule, it should be recognized that some of those costs are already being incurred by the industry. As mentioned previously, periodic inspections of intermodal equipment by those controlling that equipment (§ 396.17(c)) are apparently being performed at least once every 12 months, as required. Additionally, as presented later in the discussion of inspection, repair and maintenance costs, surveys of steamship lines and railroads that are also IEPs indicate that at least some of those equipment providers are engaging in regular repair and preventative maintenance, as well as in various inspection activities. Furthermore, information from motor carriers indicates that some are currently doing limited repair and maintenance on the chassis that are tendered by IEPs to them. Therefore, the costs of this rule are lower than they would be if IEPs were not performing any inspections, repairs, or maintenance.

Total first-year costs associated with this proposed rule range from $28 to $41 million, depending on equipment providers' current inspection, maintenance, and repair programs for their chassis. Total discounted costs over the 10-year analysis period range from $147 to $242 million, using a seven percent discount rate.

A copy of FMCSA's preliminary Regulatory Impact Analysis (RIA) is included in this rulemaking docket.

Filing Intermodal Equipment Provider Identification Report (MCS–150C)

Currently, a motor carrier is required to file a Motor Carrier Information Report (Form MCS–150) with FMCSA before it begins to operate in interstate commerce and to file an update of the report every 24 months. The proposed rule would require each equipment provider to register with FMCSA (if it has not already done so) and to obtain a USDOT number or other unique identification number by submitting an Intermodal Equipment Provider Identification Report, Form MCS–150C, to FMCSA. Additionally, each entity must file an update to its initial MCS–150C filing at least every 24 months. FMCSA estimates that 108 entities (93 steamship lines, 5 railroads, and 10 common pool operator/equipment lessors) will need to submit Forms MCS–150C.

Form MCS–150C would be a single-page form that includes questions about basic information, e.g., name, address, telephone number, numbers and types of equipment, etc. FMCSA estimates it would take 20 minutes to complete Form MCS–150C the first time that it is filed.[11]

According to national employment and wage data from the Occupational Employment Statistics survey published by the Department of Labor, Bureau of Labor Statistics, a first line supervisor/manager in a transportation and material moving occupation (those FMCSA believes will be filling out Form MCS–150C) earned a median hourly wage of about $21.08. Total compensation for a supervisor/manager responsible for filing a Form MCS–150C is estimated at $30.79, of which $21.08 is the wage and salary and $9.71 is the benefit.

This evaluation estimates that IEPs would incur a one-time cost of approximately $10.27 per entity (⅓ hour times $30.79), or about $1,110 ($10.27 × 108 = $1,109.16) for the industry to prepare and submit MCS–150Cs to FMCSA. As mandated in section 217 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Pub. L. 106–159, 113 Stat. 1748, at 1767 (December 9, 1999), the MCS–150 need not be updated more frequently than every two years. FMCSA estimates the biennial update would take considerably less time than the original submission, because most of the information is likely to be the same, and equipment providers would already have had the experience of completing the form at least once before. For purposes of this analysis, the biennial update is estimated to take 10 minutes.[12] In addition to the one-time filing cost, IEPs would also incur a recurrent charge of $5.13 per entity

[11] FMCSA, Motor Carrier Identification Report, 65 FR 70509, November 24, 2000.

[12] The estimated time requirements for chassis owners and providers to fill out an MCS–150C for the first time and biennially are consistent with FMCSA's estimate of the time it takes motor carriers to fill out an MCS–150.

biennially. Table 13 summarizes the estimated first-year costs of initially filing a MCS–150C form with FMCSA, as well as subsequent costs incurred filing the biennial update every two years. Note that motor carriers already are required to file Form MCS–150, so they would not incur any new costs associated with this aspect of the proposed rule.

TABLE 13.—COSTS OF FILING THE INTERMODAL EQUIPMENT PROVIDER IDENTIFICATION REPORT (FORM MCS–150C)

Provider	Number of entities	Existing costs	Additional costs due to the NPRM	
			Initial (1st-year) costs	Total recurring costs (years 2–10)*
Steamship Lines	93	None	$955	$1,618
Railroads	5	None	52	88
Common-pool Operators	10	None	103	173
Motor Carriers	1,900	19,502	0	0
Total	2,008	19,502	1,110	1,880

* Net present value over a 10-year period using a 7 percent discount rate.

Displaying a USDOT Number or Other Unique Identification Number on Each Container Chassis

The proposed rule would require all IEPs who tender such equipment to motor carriers to mark their container chassis with a unique USDOT number that is assigned to those filing the MCS–150C, or another number unique to that entity. FMCSA does not mandate a particular method of vehicle identification; thus, the costs associated with this proposal would vary depending on the method used to mark the container chassis with the required type of marking (i.e., USDOT number versus an alternative identifier). FMCSA believes that the vast majority of IEPs would use either stencils or decals for marking, because these are the cheapest methods. This assumption and the following assumptions on time and material requirements for container chassis marking are consistent with FMCSA's Final Rulemaking analysis for Commercial Motor Vehicle Marking published in the **Federal Register** on June 2, 2000, at 65 FR 35287. FMCSA has estimated that material costs for marking a container chassis with a USDOT number or other unique identification number decrease with increasing fleet size; that is, marking for smaller fleets is estimated at $20 per unit, while marking for IEPs with more than 20 units in their fleet is estimated at approximately $10 per vehicle. The material cost decreases to approximately $2.50 per vehicle for a fleet of more than 1,000 units. The chassis marking costs would impact only those equipment providers of intermodal container chassis who tender such equipment to other parties. This NPRM assumes the material costs associated with marking of intermodal container chassis would average approximately $6.25 per container chassis.[13]

FMCSA estimates that the average time to affix a USDOT number or other unique identification number would be about 12 minutes. According to national employment and wage data from the Occupational Employment Statistics survey, the median hourly wage rate for a painter of transportation equipment is $16.39. Incorporating a 31.5 percent benefits package yields a total hourly compensation rate of $21.55. Assuming 12 minutes per marking, the labor cost to mark each intermodal container chassis is estimated to be roughly $4 per container chassis after rounding.

Combining the above estimates for material and labor, FMCSA estimates that the total costs to mark one intermodal container chassis with a USDOT number or other unique identification number is about $11 (after rounding). First-year costs would equal $8.9 million to mark all container chassis operating in the United States. Subsequently, every year thereafter, a portion of the chassis will be retired and replaced by new chassis, each of which will need to be marked. FMCSA estimates that the operational life of a chassis is 14 years on average. Consequently, for the purposes of this analysis, it is assumed that 1/14th of the chassis fleet is retired and replaced annually. Total recurring costs (in years two through 10 of the analysis period) equals $3.9 million, with total 10-year chassis marking costs estimated at $12.8 million (after rounding). Table 14 illustrates the estimated number of container chassis and costs of marking. The cost estimates assume the identification number would be applied with a stencil and spray paint. If the identification number were to be applied using decals, recurring costs may be somewhat higher to account for replacement of decals that loosen over time. Note that motor carriers are assumed to incur no costs associated with the chassis marking requirements, because it is believed that generally they do not tender chassis to other parties for drayage.

[13] The $6.25 estimate is the average of $2.50 and $10.00. We assume that there would be a negligible number of equipment providers owning fewer than 6 chassis. Therefore, the highest material cost, $20 per unit, was not used in this analysis. FMCSA acknowledges that the estimated container chassis marking cost of $6.25 per container chassis is conservative and probably over-estimates the costs of compliance.

TABLE 14.—ESTIMATED COST OF CHASSIS MARKING

Owner type	Entities	Total number of chassis controlled [14]	Existing costs	Additional costs due to the NPRM	
				Initial costs	Total for recurring costs (years 2–10)*
Steamship Lines	93	392,000	None	$4,327,680	$1,882,232
Railroads	5	96,200		1,062,048	461,886
Common-pool Operators	10	320,000		3,532,800	1,536,507
Motor Carriers	1,900	41,800		0	0
Total	2,008	850,000	$0	8,922,528	3,880,625

* Net present value over a 10-year period using a 7 percent discount rate.

Establishing a Systematic Inspection, Repair, and Maintenance (IRM) Program

Periodic inspections. Current regulations (49 CFR 396.17) require motor carriers or their agents to conduct periodic (annual) inspections of their equipment. With regard to intermodal chassis, these inspections appear to be conducted for the most part by IEPs. As a result of research conducted prior to this rulemaking (i.e., surveys, port visits, roadside inspections), FMCSA concluded that the IEPs did in fact appear to be conducting the vast majority of inspections that would satisfy § 396.17 requirements regarding periodic (annual) inspections of the chassis. As such, FMCSA believes there would be no new costs to equipment providers or motor carriers for periodic (annual) inspections of intermodal chassis because of this proposed rule.

Systematic inspections. In addition to the periodic (annual) inspection regulations (396.17), § 396.3 requires every motor carrier or their agent to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control. The parts and accessories are required to be in safe and proper operating condition at all times. These parts and accessories include those specified in Part 393 and any additional parts and accessories that may affect the safety of operation, including but not limited to frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems. However, the proposed rule now would explicitly require IEPs to comply with the systematic inspection, repair, and maintenance requirements of § 396.3. These requirements do not provide specific intervals for the routine inspections, or provide inspection criteria.

Frequency of inspection. As regards estimating costs of making the systematic inspection, maintenance, and repair requirements applicable to intermodal equipment providers, FMCSA first attempted to determine whether the equipment providers had maintenance or repair programs that could satisfy some or all of the proposed § 396.3 requirements. Responses from the survey of steamship lines indicated that the seven entities queried were fully complying with existing systematic inspection, maintenance, and repair regulations. However, anecdotal information obtained from port visits and participation in roadside inspections of intermodal chassis by FMCSA analysts indicated otherwise. Because SAFETEA–LU explicitly requires intermodal equipment providers to comply with the systematic inspection, repair, and maintenance requirements of § 396.3, the relevant question then becomes whether there are any new costs associated with this aspect of the proposed rule. Motor carriers were already directly subject to these requirements, and this proposed rule would simply ensure the transfer of this responsibility to non-motor carrier IEPs.

As a result of its investigation, FMCSA concluded that there was a significant probability that full compliance was not being achieved with the existing regulations. IEPs, as a customary business practice, do not provide systematic inspection, repair and maintenance programs. Consequently, for the purpose of estimating the economic costs of this proposed rule, FMCSA assumes that non-motor carrier IEPs would in fact be required to undertake new costs because of this rulemaking. Whether or not this accurately represents the current situation, our assumption of less than full compliance is conservative because it helps ensure that FMCSA does not underestimate the economic costs of this proposed rule.

Because the regulatory impact analysis (RIA) must quantify the number of additional inspections to be conducted each year as a result of this proposed rule, FMCSA estimates about one a year is conducted by IEPs now, but four are needed for a reasonable systematic inspection, repair and maintenance program. We estimate that, on average, three additional inspections would be required for that portion of the non-motor carrier owned or controlled intermodal chassis currently in operation (even though the proposed rule sets no explicit requirements on the number of inspections per chassis under a systematic IRM program). FMCSA believes that a minimally-compliant IEP could fulfill the requirements of this proposal. For the purposes of estimating costs for the RIA, this assumption would effectively amount to a quarterly inspection program for the chassis owned or controlled by IEPs.

Regarding the number of chassis being maintained in a manner consistent with the regulations, FMCSA estimates between 25 and 50 percent of the existing intermodal chassis population are currently not being properly maintained.[15] Two estimates are chosen here due to the uncertainty associated with current systematic maintenance practices. FMCSA estimates that each chassis that is not currently maintained would receive three additional inspections each year on average as part of systematic IRM programs implemented or modified as a result of this proposed rule. Conversely, it is estimated that the remainder, or 50 to 75 percent of all chassis currently in use,

[14] This term ''controlled'' is loosely defined here as those chassis owned or leased (long term) by the entity and for which they have responsibility or decision-making authority over maintenance.

[15] This percent is based on the agency's analyses of the AAR and OCEMA responses to its surveys, as well as from information gathered from our port visits.

are already provided at least four complete inspections per year and therefore, would not require any additional inspections as a result of this proposed rule.

This analysis uses an average of 30 minutes to conduct an inspection of an intermodal chassis and that a transportation inspector earning $30.79 per hour in wages and benefits would perform the inspections, supported by a mechanic. This is based on data from the AAR survey response. It is also consistent with the amount of time to complete a Level V inspection. The mechanic is assumed to devote 15 minutes to the inspection, the inspector 30 minutes. The median hourly wage for a mobile heavy equipment mechanic is estimated from employment and wage data from Occupational Employment Statistics to be $17.69 as of May 2003. Assuming benefits are equal to 31.5 percent of wages, the total loaded labor cost of the mechanic would be $23.26 per hour. The total cost of each additional inspection of an intermodal chassis would be $21.21. This cost estimate is consistent with the AAR members' estimates of annual inspection costs of $20 if performed by their own personnel and $18 if outsourced to an on- or off-site terminal inspection operator. The cost of four inspections per year would be $84.84.

Additional Maintenance and Repair Costs. FMCSA recognizes that the maintenance and repair activities of some systematic IRM programs might need to be expanded in order to bring the programs into full compliance with the proposed requirements. For the most part, however, the primary change anticipated is that maintenance and repair will become more proactive and less reactive. For instance, some IEPs currently perform preventative maintenance when driver, inbound, outbound, or roadability inspections at terminals find problems (or during the annual inspection required by the FMCSRs). The proposed rule would make the preventative maintenance of those providers more regular or time-based. This would place necessary maintenance and repair activities upstream in the interchange process reducing the ''reactive'' nature of that activity.

There will most likely be some shift of repair costs from motor carriers to IEPs, but the magnitude of this shift is uncertain. However, FMCSA believes this shift represents a transfer payment of existing costs, and therefore is not expected to impact the overall costs or benefits of the proposed rule.

Total Systematic Maintenance Program Costs. Table 15 shows the estimated costs of IRM programs for IEPs, based on assumptions about existing compliance. Estimates are presented for the cases where (1) 50 percent of all chassis are assumed to be in compliance with existing systematic inspection, repair, and maintenance regulations (requiring no additional inspections per year), while the other 50 percent are assumed to require three additional inspections per year (where the fourth quarterly inspection represents the annual inspection, which FMCSA believes is already being performed); and (2) where 75 percent of all chassis are assumed to be in compliance with existing regulations (requiring no additional inspections per year), while the other 25 percent would require three additional inspections per year. As Table 15 indicates, according to FMCSA assumptions for this analysis, the proposed rule is expected to add between $13.5 million and $27.0 million per year to the cost of systematic IRM programs for IEPs, depending on the percentage of chassis which are already believed to be in compliance with the existing systematic inspection, repair, and maintenance regulations. The estimated total present value of the cost of systematic IRM requirements for equipment providers over a 10-year period is estimated to be between $95 million and $190 million. Annual costs associated with this rulemaking represent an increase of one to three percent in the costs of systematic IRM programs already undertaken by non-motor carrier IEPs, based on information obtained from equipment provider surveys regarding the average annual maintenance costs incurred per chassis.

TABLE 15.—ESTIMATED COST OF SYSTEMATIC INSPECTION, REPAIR, AND MAINTENANCE PROGRAMS FOR CHASSIS

Intermodal provider	Number of		Existing inspection, repair, and maintenance costs		Additional costs due to NPRM	
	Providers	Chassis	Assuming 50% of chassis are in full compliance and 50% require three additional inspections per year	Assuming 75% of chassis are in full compliance and 25% require three additional inspections per year	Assuming 50% of chassis are in full compliance and 50% require three additional inspections per year	Assuming 75% of chassis are in full compliance and 25% require three additional inspections per year
Steamship Lines	93	392,000	.....	.....	.....	.....
Railroads	5	96,200	.....	.....	.....	.....
Common-pool Operators	10	320,000	$913,771,250	$927,292,625	$27,042,750	$13,521,375
Motor Carriers	1,900	41,800	.....	.....	.....	.....
Total	2,008	850,000	.....	.....	.....	.....

Recordkeeping

As stated earlier, FMCSA believes that the systematic IRM program called for in the proposed rule will require four inspections of intermodal chassis per year, on average.

FMCSA estimates that the time needed to document and file each inspection report is approximately 3 minutes. Therefore, this analysis assumes that it would take each IEP approximately 3 minutes on average per intermodal chassis per inspection to document and retain the inspection reports. Assuming that a transportation inspector earning $30.79 per hour in wages and benefits would perform the inspections and document the findings, the total cost to document and retain each inspection report is estimated to be approximately $2 per intermodal chassis per inspection (or ($30.79/60) × 3 minutes).

Annual Inspections. Under current regulations, motor carriers are required

to comply with the periodic recordkeeping requirements of § 396.21, and the proposed rule would not impose any additional recordkeeping requirements on them. Additionally, based on its research, FMCSA believes that other IEPs (i.e., steamship lines, railroads, and common pool operators) are currently inspecting their chassis on an annual basis. As such, for the purposes of this analysis, these other IEPs are assumed to prepare a report that is equivalent to the one required by § 396.21, given that FMCSA has received no information through its surveys, port visits, or roadside inspection activities, that would indicate otherwise. The proposed regulatory change, consequently, will not impose any additional regulatory requirements on the other IEPs relating to their annual inspections.

Systematic Inspections. It is assumed that motor carriers are currently performing full inspections of intermodal chassis they control four times per year. This is not assumed to be the case for IEPs, however. Some portion of chassis owned or controlled by other (non-motor carrier) equipment providers (between 25 percent and 50 percent in this analysis) are assumed to be inspected once annually. Consequently, the proposed regulatory change will require additional recordkeeping for non-motor carrier IEPs.

Assuming that the recordkeeping for each intermodal chassis inspection costs $2, and that these intermodal equipment providers will need to perform three additional inspections per year per chassis, the recordkeeping requirements of the proposed regulatory change are expected to cost the non-motor carrier IEPs an additional $6 per chassis per year.

Total Cost of Recordkeeping. Table 16 presents the total annual estimated cost of recordkeeping currently and under the proposed regulations, along with the increase in the cost of recordkeeping attributable to the new regulations.

TABLE 16.—ESTIMATED COST OF SYSTEMATIC INSPECTION, REPAIR, AND MAINTENANCE RECORDKEEPING

Description	Estimated number of		Existing annual costs	Annual cost under the proposed regulations	Change in annual costs attributable to the proposed regulations
	Providers	Chassis			
Steamship Lines	93	392,000	$784,000	$3,136,000	$2,352,000
Railroads	5	96,200	192,400	769,600	577,200
Common-pool Operators	10	320,000	640,000	2,560,000	1,920,000
Motor Carriers	1,900	41,800	334,400	334,400	0
Total	2,008	850,000	1,950,800	6,800,000	4,849,200

The annual cost of recordkeeping attributable to the proposed rule is $4,849,200. Over the 10-year analysis period, the present value of the cost of recordkeeping would be $38,907,752.

New Reporting System for Defective/Deficient Equipment. The proposed rule would require that IEPs establish a system for motor carriers and drivers to report to the IEPs any defects or deficiencies in tendered chassis that would affect the safety of the operation of those chassis or result in its mechanical breakdown on the road. This proposed change would require: (1) The establishment of the system; (2) the minimum information that the IEP must obtain from motor carriers and drivers; (3) the corrective actions that must be taken when a chassis is identified as being defective or deficient in some way; and (4) the retention period for all documentation that is generated as a consequence of this system. This requirement would be added to the FMCSRs in a new § 396.12. All of these potential impacts are discussed.

Nature of Notification. The discovery of a chassis problem by a driver could occur at any of a variety of locations. It might occur during the driver's mandated inspection of the chassis at the start of a trip, during the movement over the public roadways from the origin terminal to the destination of the container on the chassis, or at the destination. Potentially, the discovery could occur hundreds of miles distant from the intermodal providers' nearest operational location. The average length of haul for chassis transported by the nine trucking firms that responded to FMCSA's intermodal survey varied from 11–20 miles to 150–200 miles.

For purposes of this analysis, FMCSA assumes that no additional costs will be incurred in order for IEPs to receive notification of problems. Because problems with chassis already occur, FMCSA believes that such systems are already well established to address problems. Additionally, FMCSA received no information during its data collection immediately prior to this rulemaking to indicate otherwise, and the agency found such systems already in place during its port visits. Consequently, no additional costs are expected to result.

Motor Carriers and Drivers. For the systems established by IEPs to be effective, motor carriers and drivers must report defective or deficient chassis. Proposed § 390.44 would require drivers to report to the IEP, or its agent, the condition of each vehicle operated. Also, motor carriers and drivers are responsible for taking only roadworthy chassis on the public roadways, so it would be in their best interest to report any problems with defective or deficient chassis that are encountered.

For purposes of this analysis, FMCSA assumes that no additional costs will be incurred by drivers and motor carriers in order to notify chassis providers of problems with defective or deficient chassis. Problems with chassis already occur, and drivers or motor carriers are already contacting providers (whether in person or by phone) to inform them of those problems. Additionally, FMCSA believes that the new application of the systematic IRM requirement to equipment providers will generally result in these problems being noticed and corrected prior to the transfer of the chassis.

Driver Chassis Inspection Reports. According to proposed § 396.12, the reports to be received by the IEP from the motor carrier and the driver will need to include the following information:

- The name of the motor carrier responsible for the operation of the chassis at the time the defect or deficiency was discovered by or reported to the driver;

• The USDOT identification number or other unique identification number of the motor carrier;
• The date and time the report was submitted; and
• The defects or deficiencies reported by the motor carrier or driver.

As mentioned before, chassis currently experience problems that are being reported to IEPs. With the possible exception of the USDOT identification number or other unique identification number, good business practice would seem to require that all of the information mandated in reports under new § 396.12 is currently being collected. Additionally, FMCSA received no information during its data collection immediately prior to this rulemaking to indicate otherwise. Therefore, no additional costs are expected to result from the required driver chassis inspection reports.

Corrective Actions. Proposed § 396.12 would require each IEP to establish a system for motor carriers and their drivers to report damage, defects, and deficiencies. After a chassis returns to the possession of the IEP, § 396.12 would mandate that the provider must correct any reported defects or deficiencies in the chassis that make the chassis not roadworthy. Furthermore, before a provider can place the chassis in service, the provider must document the actions taken to correct any reported defect or deficiency, or must document that repairs were unnecessary.

Based on information obtained from equipment provider surveys FMCSA has concluded that IEPs currently have repair facilities for dealing with chassis that are not roadworthy. Additionally, during its port visits, FMCSA staff identified repair facilities at all the terminals they toured. Consequently, § 396.12 would not require the establishment of new facilities, nor is there any reason to believe that the new section will necessitate any expansion of existing facilities.

Good business practice for chassis providers and their service departments would include documenting repairs made or documenting that repairs were not made. This information assists those monitoring the cost and work of repair facilities. Information obtained from the equipment providers' surveys confirmed that IEPs are indeed following good business practice. The proposed § 396.12 would not increase the need for this documentation. It might, however, change the nature of the documentation somewhat. For instance, if a chassis were brought in for a defective wheel and no wheel problem could be found, then current documentation might just say ''Checked wheels.'' Under the proposed § 396.12, the documentation might say ''Check wheels after receiving trouble report from motor carrier. Complete check revealed no problem.'' FMCSA believes any change in documentation would be minor and would not materially add to the costs of the providers, however.

Retention of Records. Under proposed § 396.12, all documentation must be kept for a period of three months from the date of a trouble report. Available intermodal chassis provider industry information indicates that records of inbound and outbound inspections are kept between one and seven years, with three to five years being typical.[16] FMCSA has no reason to expect that repair records, which are arguably more critical to the operation of intermodal chassis providers than records on inbound and outbound inspections, would be kept for less time. Additionally, FMCSA received no information during its data collection effort immediately prior to this rulemaking to indicate otherwise. Consequently, the retention of records, as required by proposed § 396.12, would not add to the costs of intermodal chassis providers.[17]

Overall Impact. The overall impact of proposed § 396.12, Procedures for intermodal equipment providers to accept reports required by § 390.44(b), on the costs of intermodal chassis providers, is believed to be negligible. All required actions regarding the collection and retention of records are currently being performed in one form or another, according to FMCSA survey analysis and other research (port visits). Proposed § 396.12 is not expected to add materially to the current workload of intermodal chassis providers, their service organizations, or to motor carriers and their drivers.

Total Compliance Costs of the Proposed Regulations

Table 17 summarizes the expected compliance costs attributable to the proposed regulation.

TABLE 17.—ESTIMATED COSTS OF THE PROPOSED RULE

Requirement	Existing costs (annual)	Additional costs due to the NPRM		
		Initial cost (year 1)	Total for recurring costs (years 2–10)**	Total cost (years 1–10)**
Filing MCS–150C	$19,502	$1,110	$1,880	$2,990.
Chassis Marking	$0	$9,384,000	$4,081,352	$13,465,352.
Systematic Inspection, Repair, and Maintenance Costs.	$913,771,250 to $927,292,625.	$13,521,375 to $27,042,750.	$81,447,105 to $162,894,210.	$94,968,480 to $189,936,960.
Recordkeeping	$1,950,800	$4,849,200	$34,058,752	$38,907,952.
§ 396.12	*	$0	$0	$0.
Total Costs	$915,741,552 to $929,262,927.	$27,292,899 to $40,814,274.	$119,388,362 to $200,835,467.	$146,681,261 to $241,649,741.

* Included in the costs of other actions.
** Net present value over a 10-year period using a 7 percent discount rate.

The total compliance costs, or the sum of the total initial and total recurring costs, are expected to be between $147 million and $242 million. Consistent with OMB directives, this is the present value of the expected cost stream calculated over a 10-year period using a 7 percent discount rate.

FMCSA seeks comment on the cost analysis.

[16] Information on intermodal chassis operations submitted by OCEMA to FMCSA in 2004 in response to questions posed by FMCSA.

[17] Alternatively, any costs associated with the retention of records for the proposed defective and deficient equipment reporting system could be assumed to be covered by the costs associated with recordkeeping.

Safety and Economic Benefits of Improving Container Chassis Maintenance

The purpose of the proposed regulation is to ensure that intermodal chassis used to transport intermodal containers are safe. The explicit inclusion of IEPs in the scope of the FMCSRs would ensure that IEPs could be subject to the same enforcement proceedings, orders, and civil penalties as those applied to motor carriers today. The systematic inspection, maintenance, and repair requirements would ensure safer and more reliable container chassis on the nation's highways. The expected benefits of the proposed rule include the following:

- Increased safety of intermodal chassis operation as a result of reducing crashes attributable to those chassis;
- Increased operational efficiency of intermodal chassis as a result of—
  - Reducing the vehicle out-of-service rate;
  - Reducing the average idle time spent by truckers waiting for chassis repairs on the road;
  - Reducing the average time spent by truckers at rail terminals or port facilities waiting to be given a roadworthy chassis. This effectively decreases congestion costs at those facilities, which are typically located in urban areas.

The following sections quantify the potential benefits of the proposed rule by estimating the number of crashes avoided to justify the compliance costs directly or indirectly imposed by the rule. The sections also provide qualitative discussion of benefits of the proposed rule where quantitative estimates are not available.

Threshold Analysis for Safety Benefits. Section III of this document contains data analysis conducted by FMCSA that shows that intermodal trailers have significantly higher vehicle out-of-service (OOS) rates than non-intermodal trailers. The results indicate that chassis owned by a motor carrier appear to have lower OOS rates than the comparable equipment owned by non-motor carrier equipment providers. These findings are still considered preliminary because the sample size of chassis inspection data by ownership type was quite small. The proposed rule's explicit inclusion of IEPs would better enable FMCSA to determine whether and how equipment providers are complying with provisions of the FMCSRs and to compel compliance, if necessary. Additionally, FMCSA analysts believe that a portion of the chassis currently in use will receive additional inspections each year, because this proposed rule explicitly requires non-motor carrier intermodal equipment providers to comply with the existing systematic inspection, repair, and maintenance regulations. A better-inspected, maintained, and repaired intermodal chassis fleet would be likely to result in a decrease in crashes on the Nation's highways.

The estimated cost of a crash involving a fatal injury is $3.57 million for a truck tractor with one trailer, and the costs of non-injury or property-damage-only crashes are estimated to be $12,077 each. The estimated average cost of a crash reported to police involving a truck tractor with one trailer is $76,698.[18] Using recent data on the number of crashes involving truck tractors with single trailers, Table 18 estimates the total crash costs for these vehicles. The cost estimate shown in Table 18 includes the cost of fatal and injury crashes, but does not include the costs associated with property-damage-only crashes.

TABLE 18.—ESTIMATED COSTS OF CRASHES INVOLVING TRUCK TRACTORS WITH TRAILERS, 2002

Truck tractors	Fatal crashes	Injury crashes	Total estimated costs
1 trailer	2,937	42,000	$3,447 million.

Source: ''Traffic Safety Facts 2002'', available at: *http://www-nrd.nhtsa.dot.gov/Pubs/TSF2002.pdf.*

As stated, the rule is expected to result in compliance costs of between $28 million and $41 million in the first year, and $147 million and $242 million over the entire 10-year analysis period. The proposed rule should result in benefits that are greater than the cost of compliance, which would result in a positive cost/benefit ratio. Focusing on saved lives alone, the proposed rule would need to prevent between 8 and 12 fatalities per year attributable to crashes involving intermodal chassis over the 10-year period. These 8 to 12 fatalities represent just 0.2% to 0.3% of the 3,762 fatalities in combination truck crashes in calendar year 2003. At the break-even point, compliance costs equal the benefits attributable to avoiding just a few of the fatal crashes that would have occurred in the absence of the proposed regulation. Of course, reduced injuries, property damage, and other incident consequences would reduce the number of lives that would need to be saved in order for the rule to be cost-beneficial. We believe the proposed rule is likely to prevent enough crashes to justify the costs.

Benefits Associated With Increased Operational Efficiency

While operating efficiency is not something FMCSA regulates, we note that in addition to the safety benefits, the proposed rule is likely to produce benefits from improved operational efficiency. Currently, from our research, FMCSA concludes there is no standard procedure for a truck driver or motor carrier to follow when confronted with an intermodal chassis placed OOS as a result of a roadside inspection. One of the uncertainties is the issue of responsibility. If the chassis's problem developed after the driver left the terminal, then the contractual responsibility in many cases lies with the commercial driver and the motor carrier, not with the equipment provider. If, however, the chassis problem was a pre-existing condition, then the chassis owner is responsible. According to IANA, many equipment providers have service contracts with repair vendors. If a chassis problem needs to be fixed in order for the driver to resume operation, these vendors are often called to provide the repairs. Additional uncertainty surrounds the question of authorization for this repair, because the service contract is between the service vendor and the chassis provider and the provider would have to authorize a repair request. In some cases, the truck driver's motor carrier

[18] Estimated in 2003 dollars calculated using the gross domestic product (GDP) deflator, and estimates from ''Revised Costs of Large Truck and Bus Involved Crashes,'' final report to FMCSA by Eduard Zaloshnja and Ted Miller, available at: *http://ai.volpe.dot.gov/CarrierResearchResults/CarrierResearchContent.asp.*

would have to make arrangements with the chassis provider's service vendor to repair the chassis.

The potential reduction of OOS rates would increase the operational efficiency of intermodal transportation as a whole. A chassis placed OOS must not be operated until the repairs required by an OOS order have been made. According to information provided to FMCSA by ATA members, carriers spend, on average, 3 hours of a driver's time and 1.5 hours of other employees' time to correct each vehicle OOS order received on chassis tendered by an equipment provider. The opportunity cost for a truck driver and one employee's time is calculated at $116.35 per vehicle OOS order attributable to a problem chassis.[19] Note that this is considered a conservative estimate, because FMCSA used an average commercial driver wage rate to estimate the opportunity costs of a vehicle OOS order, in lieu of a ''revenue per tractor'' estimate, which would be higher because it accounts for the opportunity cost of the vehicle as well as the driver.

Given that, on average, 18.5 percent of roadside inspections of intermodal chassis result in vehicle OOS violations, cost savings, in terms of the opportunity cost of driver and motor carriers' time, would quickly add up, as there are approximately 850,000 intermodal chassis in operation in the U.S. Roadside repair costs for intermodal chassis, other than those involved in vehicle OOS orders, may also be significantly reduced, given evidence indicating that intermodal chassis typically have more equipment defects and deficiencies than non-intermodal trailers. Clearly, a reduction in equipment violations severe enough to cause a chassis to be placed OOS would mean less disruption of supply chains. FMCSA attempted conservatively to estimate the number of intermodal chassis vehicle OOS orders that would be avoided as a result of this proposed rule. We assumed that this proposal would reduce the intermodal chassis OOS rate to the national vehicle OOS rate for all trailers (discussed earlier in this NPRM in Table 11). Initial results indicate that such changes could reap efficiency benefits of $40,000 to $410,000 annually. Again, FMCSA considers these estimates to be conservative, because it used a driver wage rate, rather than an average revenue per tractor estimate, to determine the opportunity costs of vehicle OOS orders. Complete details of this analysis are contained in the full RIA in the docket.

At intermodal terminal facilities, the effect of the proposed rule would be to reduce the time needed for motor carriers to pick up a roadworthy chassis. Motor carriers report that they currently spend between 30 minutes and 2 to 3 hours to find a roadworthy chassis. That means that motor carriers could save between $11.69 and $46.78 in driver's costs alone, if this wait/search time could be completely eliminated. The proposed rule, by mandating that chassis providers implement systematic inspection, maintenance, and repair programs, can be expected to reduce the number of defective chassis being offered in service, and thereby reduce the time needed by truck drivers to find a roadworthy chassis.

Delays at a port or rail intermodal terminal and on the road due to poor container chassis condition affect only a small segment of the motor carrier industry. However, delays at intermodal facilities and the related issue of poor container chassis condition on the road are crucially important to trucking firms that pick up and deliver freight at ports and rail terminals. Drayage firms that service ports, especially, operate in a highly competitive market, with many small motor carriers and owner-operators competing to provide services. The drivers are typically paid per load and operate on very slim profit margins. Delays at port or rail facilities as well as on the road impose a cost on these firms in lost revenues and profits. The reduced efficiency of this critical link in the transportation system also imposes costs on intermodal freight customers.

Intermodal freight volume is expected to continue to grow, and ports and rail terminals must improve competitiveness both locally and globally. This will require the utilization of existing infrastructure and greater economic efficiency. The amount of cargo moving in maritime containers is forecasted to grow nearly three-fold by 2020, rising from 57 million twenty-foot containers in 2000 to 163 million in 2020. Systematic inspection, repair, and maintenance of intermodal container chassis would ensure safe operation of these container chassis on the road, which in turn would enhance the reliability and economic efficiency of the intermodal freight traffic in the U.S.[20]

Table 19, below, compares the current Federal requirements with new requirements proposed in this NPRM and shows the benefits and costs associated with the proposals.

[19] Using National employment and wage data, the median hourly wage for a truck driver is estimated at $16.01 and supervisor/manager is estimated at $21.08. With fringe benefits added to the wages, the hourly wage and salaries are estimated at $23.39 and $30.70 for truck driver and the manager/supervisor respectively.

[20] Principles for a U.S. Public Freight Agenda in a Global Economy, from Martin E. Robins and Anne Strauss–Wieder, Metropolitan Policy Program, Brookings Institution, January 2006, citiing Nariman Behravesh, ''The US and Global Outlook: Storm Clouds on the Horizon?'' Global Insight, Port of New York and New Jersey Port Economic Briefing, October 2004.

TABLE 19.—COMPARISON OF COSTS AND BENEFITS OF THE PROPOSED REGULATION

Regulatory provisions	Comparison		Discounted 10-year costs	Benefits
	Current requirement	NPRM		
Part 386—Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings.	Enables the Assistant Administrator to determine whether a motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations.	Explicitly includes intermodal equipment providers.	No new costs associated with this provision.	Explicit inclusion of intermodal equipment providers would make them subject to the provisions or requirements of applicable statutes and the corresponding regulations; and, if violations are found, the Assistant Administrator could issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both. This will result in the following: 1. Increased safety of the intermodal container chassis operation and reduced crashes involving intermodal container chassis. 2. Increased operational efficiency of the intermodal container chassis operation. a. Reduced number of vehicle out-of-service orders related to poor intermodal container chassis condition. b. Reduced idle time spent by the driver and the truck while waiting for required repairs on the container chassis. c. Reduced time spent by truck drivers to find road worthy container chassis at the port or rail terminals. 3. Revised rules that explicitly require equipment providers to be responsible for the safety and security of their equipment: a. Eliminate externality issues that are involved when one party's (owners of intermodal container chassis—steamship lines and railroads) actions impose uncompensated costs (in terms of lost productivity, uncompensated repair costs, and decrease in overall profit margin) on another party (motor carriers). Eliminate potential barriers to information on scope and jurisdiction of FMCSRs.

TABLE 19.—COMPARISON OF COSTS AND BENEFITS OF THE PROPOSED REGULATION—Continued

Regulatory provisions	Comparison		Discounted 10-year costs	Benefits
	Current requirement	NPRM		
Part 390—General applicability.	Applies to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce. Motor carriers must assist in investigations and special studies. Motor carriers must file Form MCS–150. CMVs must be marked as specified.	Explicitly includes intermodal equipment providers and intermodal equipment.	1. $2,990 to file MCS–150C. 2. $13.5 million over 10 years for chassis marking costs.	
Part 393—Parts and Accessories Necessary for Safe Operation.	Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.	Equipment providers would be held accountable for offering in interstate commerce intermodal equipment that is not equipped with all required parts and accessories and would be required to ensure that each of those components are in safe and operable condition.	No new cost associated with this provision.	
Part 396—Inspection, Repair, and Maintenance.	Every motor carrier, its officers, drivers, agents, representatives and employees shall comply and be conversant with the rules of this part. Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control and keep the necessary records.	Intermodal equipment providers would be required to: 1. Comply and be conversant with the rules of this part. 2. Establish a systematic inspection, repair, and maintenance program and comply with inspection and recordkeeping requirements established in part 396 for motor carriers. 3. Establish a system for motor carriers and drivers to report defects and deficiencies in intermodal equipment, and to keep records.	1. No new cost associated with annual (periodic) inspection provision. 2. Equipment providers may incur an additional cost of $95–190 million over 10-year analysis period to achieve full compliance with Systematic inspection, repair, and maintenance requirements, depending upon current degree of compliance with part 396. 3. There may be an additional cost of $38.9 million over the 10-year analysis period in new recordkeeping costs.	

FMCSA requests comment on the costs and benefits estimated in this analysis.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. While we believe the rulemaking will not have a significant economic impact on a substantial number of small entities, we have chosen not to certify the proposed rule at this point. Instead, we decided to complete an Initial Regulatory Flexibility Analysis (IRFA) and solicit comments on our analysis. The IRFA and the attached regulatory impact analysis (RIA) include our discussion of the regulatory impacts, and the reasons for our recommended action.

Need for the NPRM: On January 26, 2004, the Secretary of Transportation announced that the USDOT would launch a safety inspection program for intermodal container chassis. The inspection program would provide added oversight to help ensure that the intermodal container chassis used by motor carriers to transport intermodal cargo containers are in safe and proper working order.

The announcement explained the new inspection program would be modeled on FMCSA's compliance review program already in place for the Nation's interstate motor carriers. Chassis providers would be required to obtain a USDOT number and display it on their chassis so that safety performance data could be captured. FMCSA would apply the same penalty structure and enforcement actions used for motor carriers to intermodal equipment providers demonstrating patterns of non-compliance with the new safety requirements.

Subsequently, Section 4118 of SAFETEA–LU was enacted and directs the Department of Transportation to undertake a rulemaking relating to the roadability of intermodal equipment. FMCSA, working in coordination with

other USDOT agencies, initiated this new rulemaking to advance the Department's safety goal without unnecessarily involving the Department in the commercial relations or allocation of liability between intermodal parties.

Description of Actions: In this NPRM, FMCSA is proposing to amend the FMCSRs to require entities that offer intermodal container chassis for transportation in interstate commerce to (i) file a Motor Carrier Identification Report (FMCSA Form MCS–150), (ii) display on each chassis a unique identification number (e.g., USDOT number) assigned or approved by FMCSA, (iii) establish a systematic inspection, repair and maintenance program to ensure the safe operating condition of each chassis and maintain documentation of the program and (iv) provide a means for effectively responding to driver and motor carrier complaints about the condition of intermodal container chassis.

Identification of potentially affected small entities: Entities likely to be affected by the NPRM are 93 steamship lines, 5 railroads, 10 common pool operators, and 1,900 motor carriers. All 93 steamship lines are foreign entities, and the provisions of the RFA do not apply to foreign entities.[21] According to the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. The following table indicates the percentage of affected entities defined as ''small businesses.'' [22]

The railroads that own intermodal chassis are assumed to be 5 major railroads in the United States and would not be considered small business as defined by the SBA. Additionally, it is FMCSA's belief that most of the common-pool operators that own intermodal chassis would not be classified as small business by SBA size standards, given the average size of the chassis pools they are estimated to be operating.[23]

The for-hire trucking industry in the United States consists of over 113,000 interstate motor carriers.[24] Data from FMCSA's Licensing and Insurance (L&I) database indicates roughly 125,000 active for-hire motor carriers. For-hire operators are those that offer truck transportation services to the public. The major sectors of for-hire trucking are household goods carriers, bulk carriers, tank carriers, refrigerated carriers, less-than-truckload (LTL) carriers, truckload carriers, and other specialized carriers.[25] Owner-operators, as the term implies, are independent owners of individual trucks or small fleets.[26] They generally function as for-hire carriers or provide contract or ad hoc support to larger for-hire carriers or other commercial trucking operations. In addition to for-hire carriers and owner-operators, over 480,000 other companies and governmental entities operate private fleets of trucks, which deliver and distribute products and services for their parent organizations.[27]

TABLE 20.—SMALL BUSINESS SIZE STANDARDS FOR THE POTENTIALLY AFFECTED INDUSTRIES

NAICS	Description	SBA Size Standards		Percent of industry that is small business
		Revenue (millions)	Employee	
Not Applicable	Steamship lines	NA	NA	NA
482112	Railroads		1,500	NA
532490*	Other Commercial/Industrial Machinery and Equipment Rental and Leasing	$6.0		94
484110	General Freight Trucking, Local	21.5		75
484121	General Freight Trucking, Long Distance, Truckload			74
484122	General Freight Trucking, Long Distance, Less Than Truckload	21.5		72
484220	Specialized Freight (except Used Goods) Trucking, Local	21.5		73
484230	Specialized Freight (except Used Goods) Trucking, Long Distance	21.5		77

*NAICS codes assumed for common-pool operators/shippers as equipment lessors listed in IICL Web site, such as Interpool Inc., identified them as SIC 7359 in the financial statements submitted with Securities and Exchange Commission.

The proposed rule would affect only a small percentage of trucking firms, since only approximately 1,900 trucking companies own intermodal chassis. These motor carriers belong to the five ''484'' NAICS codes identified in Table 20. For the most part, these entities would incur minimal increased costs to comply with the provisions of this NPRM, since they are already subject to the FMCSRs; indeed, the NPRM would most likely reduce overall operational costs for most of these entities, since some of the burden for inspection, maintenance, and repair will indirectly shift to non-motor carrier chassis providers.

The RIA assumes that the 10 equipment lessors (common pool operators) own an estimated 320,000 intermodal chassis or about 32,000 chassis per entity. Therefore, based on this information, we assumed that these firms fall into the 20 largest firms in this NAICS codes and earned about $3.06 billion or average revenue of $153.2 million.[28] To have a significant impact on these entities, the estimated compliance cost would have to exceed one percent of the annual revenue stream or sales, or about $1.5 million per firm per year for the 20 largest firms in NAICS 532490.[29] Although there is much uncertainty regarding the impact on common chassis pool operators (since the agency had difficulty

[21] See *www.sba.gov/advo/laws/title3_s2993.html*.

[22] Table 17 has been calculated using 1997 Economic Census Data (2002 data for all NAICS codes are not currently available) and combining it with SBA's size standards to estimate the number of small business. The 1997 data for revenue have been adjusted for 2003 revenue figures since SBA revenue size is given in 2003 dollars. The estimate was ''at least'' since there were firms that did not have revenues reported.

[23] A list of common-pool operators is available on the IICL Web site. The NAICS listed here represents all firms that provide support service to road transportation. Common-pool operators are part of this over-all group.

[24] 2002 Economic Census, Transportation and Warehousing, U.S. Bureau of the Census, Washington, DC, 2004, available on the Internet at *www.census.gov/prod/ec02/ec0248i09.pdf*.

[25] American Trucking Trends 2003, American Trucking Associations, Inc., Alexandria, VA, 2003, p. 7.

[26] Owner-Operator Independent Drivers Association Web site at *www.ooida.com*.

[27] American Trucking Trends 2003, American Trucking Associations, Inc., Alexandria, VA, 2003, p. 6, reports a total of 585 thousand interstate motor truck operators of all types. The source of the information was identified as filings with the Federal Motor Safety Administration (FMSCA) as of August 2002.

[28] 1997 Economic Census figures adjusted to 2003 dollars.

[29] Adjusting 1997 revenue reported by the 1997 Economic Census with GDP inflation adjustor.

acquiring information on them), it is believed that in some cases, the need to implement systematic IRM programs by common chassis pool operators may result in compliance costs exceeding one percent of annual revenues. Because of this uncertainty, FMCSA has decided against certifying no significant impact on a substantial number of small entities, and has instead decided to prepare an IRFA. Therefore, FMCSA invites public comment on it.

Reporting and recordkeeping requirements: This NPRM includes a new requirement for reporting and recordkeeping for steamship lines, railroads and common pool operators that own intermodal chassis. We estimate that there are 108 such entities, none of which is a small business that would be subject to the new recordkeeping requirement.

Related Federal rules and regulations. With respect to the safe transportation of intermodal chassis, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Conclusion. Based on the assessment in the regulatory evaluation, we conclude that there will not be a significant economic impact on a substantial number of small entities.

Intergovernmental Review

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. FMCSA has analyzed this proposal and determined that it would require revisions to existing information collection requirements subject to approval by OMB. This includes the requirement for entities that offer intermodal container chassis for transportation in interstate commerce to: (1) File an Intermodal Equipment Provider Identification Report (FMCSA Form MCS–150C, a variant on the currently-approved Motor Carrier Identification Report, Form MCS–150); (2) establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each item of intermodal equipment tendered to motor carriers and to maintain documentation of the program in accordance with 49 CFR part 396; and (3) provide a means for an intermodal equipment provider to effectively respond, using a variant of the Driver-Vehicle Inspection Report currently approved by OMB, to driver and motor carrier complaints about the condition of intermodal container chassis. It is anticipated that electronic recordkeeping would be allowed to reduce, to the greatest extent practicable, the costs associated with complying with the recordkeeping requirements.

There are two currently approved information collections that would be affected by this NPRM: (1) Motor Carrier Identification Report (FMCSA form MCS–150), OMB Control No. 2126–0013, approved at 74,896 burden hours through July 31, 2007; and (2) Inspection, Repair, and Maintenance, OMB Control No. 2126–0003, approved at 59,093,245 burden hours through February 28, 2006. Table 21 shows the FMCSA estimated number of intermodal container chassis by owner.

TABLE 21.—ESTIMATED NUMBER OF INTERMODAL CHASSIS BY OWNER

Types of entities	Estimated number of affected entities	Estimated number of chassis
Steamship Lines	93	392,000
Railroads	5	96,200
Common-pool operators/Equipment Lessors	10	320,000
Total	108	808,200

The total annual burden hours for the two current information collections above are 59,168,141. Table 22 depicts the proposed and current burden hours associated with the information collections.

TABLE 22.—PROPOSED AND CURRENT INFORMATION COLLECTION BURDENS

OMB approval number	Burden hours currently approved	Burden hours proposed	Change
2126–0013	74,896	74,932	36
2126–0003	59,093,245	59,214,495	121,230
Total	59,168,141	59,289,427	121,266

The following is an explanation of how each of the information collections shown above would be impacted by this proposal.

OMB Control No. 2126–0003. Intermodal equipment providers (IEPs) would be required to establish a systematic inspection, repair, and maintenance program and maintain records documenting the program. They would also be required to establish a process for a motor carrier or its driver to report defects or deficiencies they discover or which are reported to them. The estimated burden for the proposed revision to this existing information collection would be 121,230 burden hours [808,200 chassis controlled by non-motor-carrier IEPs × 3 inspections/year × 3 minutes recordkeeping per inspection × 1 hr/60 minutes].

OMB Control No. 2126–0013. The proposed rule would require each equipment provider to obtain a unique

DOT Number by submitting a Form MCS–150C to FMCSA, and to update its initial report every 2 years. FMCSA estimates that this would result in an increase of 36 burden hours for 108 affected IEPs [108 IEPs × 20 minutes / 60 minutes].

The proposals contained in this NPRM, affecting two currently approved information collections, would result in a net increase of 121,266 burden hours in the agency's information collection budget.

FMCSA requests comments on whether the collection of information is necessary for the agency to meet its goal of reducing truck crashes, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimated information collection burden; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the information collection burden on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments to OMB on the information collection burden addressed by this NPRM. OMB must receive your comments by January 22, 2007. Mail or hand deliver your comments to: *Attention:* Desk Officer for the Department of Transportation, Dockets Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act of 1969 (NEPA)

FMCSA analyzed this rule for the purpose of the NEPA (42 U.S.C. 4321 *et seq.*) and conducted an environmental assessment under the procedures in FMCSA Order 5610.1, published March 1, 2004 (69 FR 9680). Under FMCSA Order 5610.1, the environmental assessment focuses only on those resource categories that are of interest to the public and/or important to the decision: Public Health and Safety, Hazardous Materials Transportation, Socioeconomics, Solid Waste Disposal, and other Special Areas of Consideration. A copy of the draft environmental assessment has been placed in the docket.

Table 23 presents a comparison of the potential environmental and socioeconomic consequences of the Proposed-Action Alternative and No-Action Alternative from the draft environmental assessment.

TABLE 23.—ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES

Category	Proposed-action alternative	No-action alternative [1]
Public Health and Safety	Moderate positive impact	Moderate negative impact.
Hazardous Materials Transportation	Negligible to minor net positive impact	Negligible to minor net negative impact.
Socioeconomics	Moderate net positive impact	Moderate net negative impact.
Solid Waste Disposal	Negligible to minor positive and negative impact.	Negligible to minor negative impact.
Additional ''Special Areas of Consideration''		
Air Quality	Negligible to minor positive impact	Negligible to minor negative impact.
Noise	No impact	No impact.
Endangered Species	Negligible to minor positive impact	Negligible to minor negative impact.
Resources protected by the NHPA	Negligible positive impact	Negligible negative impact.
Wetlands	Negligible to minor positive impact	Negligible to minor negative impact.
Section 4(f) resources	Negligible to minor positive impact	Negligible to minor negative impact.

[1] The ''No-Action'' Alternative is evaluated from a dynamic perspective (i.e., considers both short- and long-run impacts). So, while the ''No-Action'' Alternative results in no impacts in the short-run (since there is no change in existing regulations), in the long run, it is estimated to have negative impacts, since the analysis assumes intermodal transportation continues to grow in future years.

Table 23 lists the impact categories for which there exists a potential for a positive or negative indirect impact from the Proposed-Action Alternative (this proposed rule). Without certain key pieces of information (e.g., crash data on a national level, exact number and safety record of intermodal equipment providers, and detailed transportation routes over which intermodal equipment is used), it is impossible to accurately quantify most of these impacts, though a qualitative rationale for these conclusions is offered in the draft environmental assessment.

Nevertheless, it is evident from Table 23 that the only potentially negative environmental or socioeconomic impact of the Proposed-Action Alternative (this proposed rule) involves a potentially minor to negligible negative indirect impact on solid waste disposal (caused by an increase in the amount of solid waste disposed via regular equipment maintenance). Nevertheless, that may be offset by a positive impact on solid waste disposal (caused by decreasing the amount of solid waste generated via crashes).

The beneficial impacts of the proposed rulemaking—most importantly the positive impacts on public health and safety in addition to positive indirect impacts on aspects of the physical and human environment—are in contrast to the No-Action Alternative, which has the potential to negatively impact most of the resources evaluated in the draft environmental assessment. Note that the No-Action Alternative is evaluated from a dynamic perspective, which considers both short- and long-run effects. While in the short run the No-Action Alternative has no impact (since no regulations change), there are potential impacts in the long run, because growth in intermodal transportation is assumed to continue.

FMCSA seeks comment on the draft environmental assessment.

Energy Effects

FMCSA has analyzed this action under Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The agency has determined that it is not a ''significant energy action'' under that order because it does not appear to be economically significant (i.e., a cost of more than $120.7 million in a single year) based upon analyses performed at this stage of the rulemaking process, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose an unfunded mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), resulting in the

expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more (adjusted for inflation) in any one year.

Civil Justice Reform

This rulemaking would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, entitled ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

FMCSA has analyzed this section under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks.'' The agency does not believe this rulemaking would be an economically significant rule, nor does it concern an environmental risk to health or safety that may disproportionately affect children.

Taking of Private Property

This rulemaking would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, entitled ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Federalism

FMCSA has analyzed this rulemaking action in accordance with the principles and criteria of Executive Order 13132, entitled ''Federalism,'' and determined that it has federalism implications within the meaning of the Order.

The Federalism Order applies to ''policies that have federalism implications,'' which it defines as regulations and other actions ''that have substantial direct effects on the States, on the relationship between the national government and the States, and on the distribution of power and responsibilities among the various levels of government.'' Sec. 1(a). The key concept here is ''substantial direct effects on the States.''

Section 31151(d) preempts ''a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety'' if it ''exceeds or is inconsistent with a requirement imposed under or pursuant to'' 49 U.S.C. 31151. In other words, FMCSA's final rule establishing maintenance and related requirements for intermodal equipment will preempt any State or local law or regulation on the same subject.

Nonetheless, there are exceptions to this principle. ''[A] State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005'' is preempted on the effective date of the final rule adopted under this proceeding [section 31151(e)(1)] unless, notwithstanding section 31151(d), the Secretary of Transportation ''determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce'' [section 31151(e)(2)(A)]. A State must request a non-preemption determination before the effective date of the FMCSA final rule [section 31151(e)(2)(B)], and no subsequent amendment to a non-preempted requirement may take effect unless it is first submitted to the Secretary, who must find that the amendment is no less effective than the FMCSA requirements and does not unduly burden interstate commerce [section 31151(e)(2)(C)].

Section 31151 clearly has preemptive effect. Although most of the States which adopted statutes regulating the maintenance of intermodal equipment did not enforce them for several years, section 31151 will foreclose the opportunity for States to enact future legislation on this subject which is inconsistent with the Agency's regulations. We believe this constitutes a ''substantial direct effect[ ] on the States.'' However, section 31151 does not have ''substantial direct effects * * * on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government.'' The intermodal equipment affected by this rulemaking operates in interstate commerce. The regulation of interstate commerce is constitutionally and historically vested in the Federal government, not the States. The assertion of Federal authority in this area does not change the traditional relationship between the national government and the States, nor does it affect the constitutional and practical distribution of power and responsibilities among the various levels of government.

Section 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' The constitutional authority and statutory mandate for this rulemaking are clear and explicit.

FMCSA has determined that this action would have a substantial direct effect on States. However, because existing State laws on the maintenance of intermodal equipment are so few and narrow in scope, the Agency has also determined that this action would not impose substantial additional costs or burdens on the States.

The Agency will consult with the States on the Federalism implications of this proposed regulation, as required by E.O. 13132. Also, State and local governments will have an additional opportunity to address this issue during the comment period as indicated under **ADDRESSES**.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN shown on the first page of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Intermodal equipment roadability, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials, Intermodal equipment provider, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Intermodal equipment providers, Motor carriers.

49 CFR Part 393

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety.

49 CFR Part 396

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FMCSA proposes to amend Subchapter B, Chapter III of Title 49 of the Code of the Code of Federal Regulations, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, 31151, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.1 by adding paragraph (e) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(e) Subpart F of this Part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

3. Amend part 385 by adding a new Subpart F—Intermodal Equipment Providers (§§ 385.501–383.503) to read as follows:

Subpart F—Intermodal Equipment Providers

§ 385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in § 390.5 of this chapter. A roadability review is a review by the FMCSA of the intermodal equipment provider's compliance with the applicable FMCSRs.

(b) FMCSA will evaluate the results of the roadability review using the criteria in Appendix A to this Part as they relate to compliance with Parts 390, 393, and 396 of this chapter.

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider. However, the FMCSA may cite the intermodal equipment provider for violations of Parts 390, 393, and 396 of this chapter and may impose civil penalties.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of equipment determined to constitute an imminent hazard.

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines that the intermodal equipment provider's compliance with the FMCSRs is so deficient that the provider's continued operation constitutes an imminent hazard to highway safety.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

4. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; sec. 206, Pub. L. 106–159, 113 Stat. 1763; and 49 CFR 1.45 and 1.73.

5. Revise the heading of part 386 to read as set forth above.

6. Revise § 386.1 to read:

§ 386.1 Scope of the rules in this part.

(a) The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

(b) The purpose of the proceedings is to enable the Assistant Administrator:

(1) To determine whether a motor carrier, intermodal equipment provider (as defined in § 390.5 of this chapter), property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and

(2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both, if such violations are found.

7. Revise § 386.83 to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* A commercial motor vehicle (CMV) owner or operator, including an intermodal equipment provider, that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a CMV owner or operator, including an intermodal equipment provider, to pay a civil penalty in installments. If the CMV owner or operator, including an intermodal equipment provider, fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator, including an intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the CMV owner or operator, including an intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show-cause proceeding.* (1) The FMCSA will notify a CMV owner or operator, including an intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, including an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, including an intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If a CMV owner's or operator's, including an intermodal equipment provider's, principal place of business is in a foreign country, the notice will be delivered to the CMV owner's or operator's designated agent.

(c) A CMV owner or operator, including an intermodal equipment provider, that continues to operate in interstate commerce in violation of this section may be subject to additional

sanctions under paragraph IV (h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, including intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

8. Revise the authority citation for part 390 to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31151, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

9. Amend § 390.3 by adding a new paragraph (h) to read:

§ 390.3 General applicability.

* * * * *

(h) *Intermodal equipment providers.* The rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, *except* § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

10. Amend § 390.5 by adding, in alphabetical order, definitions for ''*Interchange*,'' ''*Intermodal equipment*,'' ''*Intermodal equipment interchange agreement*,'' and ''*Intermodal equipment provider*'' to read:

§ 390.5 Definitions.

* * * * *

Interchange means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.

Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Intermodal equipment interchange agreement means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Intermodal equipment provider means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

* * * * *

11. Revise § 390.15(a) to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident including providing a full, true, and correct response to any question of the inquiry.

* * * * *

12. Amend § 390.19 by revising the section heading, the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d), (e), and (f) to read as follows:

§ 390.19 Motor carrier, HM shipper, and intermodal equipment provider identification reports.

(a) Each motor carrier that conducts operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS–150. Each motor carrier that operates in intrastate commerce, and that requires a hazardous materials safety permit under part 385, subpart E of this chapter, must file a combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B. Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS–150C. They must do so at the following times:

* * * * *

(b) The Motor Carrier Identification Report, Form MCS–150, the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, and the Intermodal Equipment Provider Identification Report, Form MCS–150C, with complete instructions, are available from the FMCSA Web site at: *http://www.fmcsa.dot.gov* (Keyword ''MCS–150'' or ''MCS–150B'' or ''MCS–150C''); from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(c) The completed Motor Carrier Identification Report, Form MCS–150, Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, or Intermodal Equipment Provider Identification Report, Form MCS–150C must be filed with FMCSA Office of Information Management.

* * * * *

(d) Only the legal name or single trade name may be used on the motor carrier's or intermodal equipment provider's identification report (Form MCS–150, MCS–150B, or MCS–150C).

(e) A motor carrier or intermodal equipment provider is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B) for—

(1) Failing to file a Motor Carrier Identification Report, Form MCS–150, the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, or the Intermodal Equipment Provider Identification Report, Form MCS–150C.

(2) Furnishing misleading information or making false statements on the Form MCS–150, Form MCS–150B, or Form MCS–150C.

(f) Upon receipt and processing of the Motor Carrier Identification Report, Form MCS–150, the Combined Motor

Carrier Identification Report and HM Permit Application, Form MCS–150B, or the Intermodal Equipment Provider Identification Report, Form MCS–150C, FMCSA will issue the motor carrier or intermodal equipment provider an identification number (USDOT Number), or advise an intermodal equipment provider it may use an identification number unique to that entity.

(1) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with additional information required by § 390.21.

(2) The intermodal equipment provider must display its assigned number on each unit of interchanged intermodal equipment.

* * * * *

13. Amend § 390.21 by revising the section heading and paragraphs (a), (b)(2), and (c)(1) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

(a) *General.* Every self-propelled CMV and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.

(b) * * *

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters ''USDOT.''

* * * * *

(c) * * *

(1) Appear on both sides of the self-propelled CMV or interchanged intermodal equipment;

* * * * *

14. Amend part 390 by adding a new subpart C (§§ 390.40–390.46) to read as follows:

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

Sec.

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

§ 390.40 What responsibilities do intermodal equipment providers have under the FMCSRs?

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the form required by § 390.19.

(b) Mark its intermodal equipment with the USDOT Number or other identifying number unique to that entity as required by § 390.21.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(e) Maintain a system of inspection, repair, and maintenance records as required by § 396.12 of this chapter for equipment intended for interchange with a motor carrier.

(f) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(g) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made in a timely manner after being notified by a driver of such damage, defects, or deficiencies.

(i) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(1) of this chapter.

§ 390.42 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) An intermodal equipment provider or its agent may electronically file questions or concerns at *http://dataqs.fmcsa.dot.gov* about Federal and State data released to the public by FMCSA, including safety violations attributable to deficiencies in intermodal chassis or trailers for which it should not have been held responsible because a motor carrier certified the equipment as passing the pre-trip inspection.

(b) A motor carrier or its agent may electronically file questions or concerns at *http://dataqs.fmcsa.dot.gov* about Federal and State data released to the public by FMCSA. These include safety violations attributable to deficiencies in intermodal chassis or trailers for which it should not have been held responsible because they concerned defects or deficiencies in parts or accessories that a driver could not readily detect during a pre-trip inspection performed in accordance with § 392.7(a) and (b) of this chapter.

(c) An intermodal equipment provider, or its agent, may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) A motor carrier or its agent may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§ 390.44 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in § 392.7(b) of this chapter and must be satisfied that they are in good working order.

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter.

§ 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations (FMCSRs)?

(a) *Generally.* Pursuant to 49 U.S.C. 31151(d), a law, regulation, order, or

other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the FMCSRs.

(b) Pre-existing State requirements—(1) *In general.* Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the effective date of the FMCSA final rule entitled ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment''.

(i) *Nonpreemption determinations.*—(A) *In general.* Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted by the FMCSA final rule on ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) Application required. Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination under this subparagraph with respect to the requirement before the effective date of the final rule. The Administrator will make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) Amended State requirements.—If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on ''Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment'' and would not unduly burden interstate commerce.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

15. Revise the authority citation for Part 392 to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

16. Amend § 392.7 by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 392.7 Equipment, inspection, and use.

* * * * *

(b) Drivers preparing to transport intermodal equipment must additionally make a visual or audible inspection of the following components before operating that equipment, and must be satisfied that they are in good working order before the equipment is operated over the road:

Rails or support frames.

Tie down bolsters.

Locking pins, clevises, clamps, or hooks.

Sliders or sliding frame lock.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

17. Revise the authority citation for part 393 to read as follows:

Authority: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

18. Revise § 393.1 to read as follows:

§ 393.1 Scope of the rules of this part.

(a)(1) Every motor carrier and its employees must be knowledgeable of and comply with the requirements and specifications of this part.

(2) Every intermodal equipment provider and its employees responsible for the inspection, repair, and maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the applicable requirements and specifications of this part.

(b) No motor carrier may operate a commercial motor vehicle, or cause or permit such a vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

(c) No intermodal equipment provider may operate intermodal equipment, or cause or permit such equipment to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

19. Revise the authority citation for part 396 to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

20. Revise § 396.1 to read as follows:

§ 396.1 Scope.

(a) Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles must be knowledgeable of and comply with the rules of this part.

(b) Every intermodal equipment provider, its officers, agents, representatives, and employees directly concerned with the inspection or maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the rules of this part.

21. Amend § 396.3 by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 396.3 Inspection, repair, and maintenance.

(a) *General.* Every motor carrier and intermodal equipment provider must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

* * * * *

(b) *Required records.* Motor carriers, except for a private motor carrier of passengers (nonbusiness), must maintain, or cause to be maintained, records for each motor vehicle they control for 30 consecutive days. Intermodal equipment providers must maintain or cause to be maintained, records for each unit of intermodal equipment they tender or intend to tender to a motor carrier. These records must include:

* * * * *

22. Amend § 396.11 by revising paragraph (a) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

(a) *Report required.*

(1) *Motor carriers.* Every motor carrier must require its drivers to report, and every driver must prepare a report in writing at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:

—Service brakes including trailer brake connections
—Parking (hand) brake
—Steering mechanism
—Lighting devices and reflectors
—Tires
—Horn
—Windshield wipers
—Rear vision mirrors
—Coupling devices

—Wheels and rims
—Emergency equipment

(2) *Intermodal equipment providers.* Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, the following parts and accessories:

—King pin upper coupling device
—Rails or support frames
—Tie down bolsters
—Locking pins, clevises, clamps, or hooks
—Sliders or sliding frame lock
—Wheels, rims, lugs, tires
—Lighting devices, lamps, markers, and conspicuity marking material
—Air line connections, hoses, and couplers
—Brakes

* * * * *

23. Add § 396.12 to read as follows as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by § 390.44(b) of this chapter.

(a) *System for reports.* Each intermodal equipment provider must establish a system for motor carriers and drivers to report to it any damage, defects, or deficiencies discovered by, or reported to, the motor carrier or driver which would—

(1) Affect the safety of operation of the intermodal equipment, or

(2) Result in its mechanical breakdown while transported on public roads.

(b) *Report content.* The system required by paragraph (a) of this section must include documentation of all of the following:

(1) Name of the motor carrier responsible for the operation of the intermodal equipment at the time the damage, defects, or deficiencies were discovered by, or reported to, the driver.

(2) Motor carrier's USDOT Number or other unique identifying number.

(3) Date and time the report was submitted.

(4) All damage, defects, or deficiencies reported to the equipment provider by the motor carrier or its driver.

(c) *Corrective action.* (1) Prior to allowing or permitting a motor carrier to transport a piece of intermodal equipment for which a motor carrier or driver has submitted a report about damage, defects or deficiencies, each intermodal equipment provider or its agent must repair reported damage, defects, or deficiencies that are likely to affect the safety of operation of the vehicle.

(2) Each intermodal equipment provider or its agent must document whether the reported damage, defects, or deficiencies have been repaired, or whether repair is unnecessary, before the vehicle is operated again.

(d) *Retention period for reports.* Each intermodal equipment provider must maintain all documentation required by this section for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

24. Revise §§ 396.17, 396.19, 396.21, 396.23, and 396.25 to read as follows:

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(b) Except as provided in § 396.23 and this paragraph, motor carriers must inspect or cause to be inspected all motor vehicles subject to their control. Intermodal equipment providers must inspect or cause to be inspected intermodal equipment that is interchanged or intended for interchange to motor carries in intermodal transportation.

(c) A motor carrier must not use a commercial motor vehicle, and an intermodal equipment provider must not tender equipment to a motor carrier for interchange, unless each component identified in appendix G to this subchapter has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with § 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), that contain the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier, intermodal equipment provider, or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control that are not subject to an inspection under § 396.23(b)(1). An intermodal equipment provider may perform the required annual inspection for intermodal equipment interchanged or intended for interchange to motor carriers that is not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier or intermodal equipment provider responsible for the inspection may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA, meeting the minimum standards contained in appendix G of this subchapter, are considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed. If a vehicle is subject to a mandatory State inspection program, as provided in § 396.23(b)(1), a roadside inspection may only be considered equivalent if it complies with the requirements of that program.

(g) It is the responsibility of the motor carrier or intermodal equipment provider to ensure that all parts and accessories on vehicles for which they are responsible that do not meet the minimum standards set forth in appendix G to this subchapter are repaired promptly.

(h) Failure to perform properly the annual inspection required by this section causes the motor carrier or intermodal equipment provider to be subject to the penalty provisions of 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) Motor carriers and intermodal equipment providers must ensure that the individual(s) performing an annual inspection under § 396.17(d) or (e) is (are) qualified as follows:

(1) Understands the inspection criteria set forth in part 393 and

appendix G of this subchapter and can identify defective components;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Is capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a State or Federal-sponsored training program or has a certificate from a State or Canadian Province that qualifies the person to perform commercial motor vehicle safety inspections, or

(ii) Has a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier or intermodal equipment maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial vehicle inspector for a State, Provincial, or Federal Government.

(b) Motor carriers and intermodal equipment providers must retain evidence of an individual's qualifications under this section. They must retain this evidence for the period during which the individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection must prepare a report that:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle or intermodal equipment provider intending to interchange the vehicle to a motor carrier;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report must be retained by the motor carrier, intermodal equipment provider, or other entity that is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report must be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report must be available for inspection upon demand of an authorized Federal, State, or local official.

(3) *Exception.* If the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, or if an intermodal equipment provider did not itself perform the annual inspection on equipment intended for interchange to a motor carrier, the motor carrier or intermodal equipment provider is responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

§ 396.23 Equivalent to periodic inspection.

(a) A motor carrier or an intermodal equipment provider may meet the requirements of § 396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. If using the roadside inspection, the motor carrier or intermodal equipment provider must retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. If the motor carrier operating the commercial vehicle is not the party directly responsible for its maintenance, the motor carrier must deliver the roadside inspection report to the responsible party in a timely manner. When accepting such an inspection report, the motor carrier or intermodal equipment provider must ensure that the report complies with the requirements of § 396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program that is determined by the Administrator to be as effective as § 396.17, the motor carrier or intermodal equipment provider must meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

§ 396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, brake inspector means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service, or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task;

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial, or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection);

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications required under this section is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

25. Amend Appendix G to Subchapter B—Minimum Periodic Inspection Standards, in Paragraph 6. Safe Loading, by adding new subparagraph 6.c to read as follows:

Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards

* * * * *

6. Safe loading.

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c. Container securement devices on intermodal equipment—All devices used to secure an intermodal container to a chassis, including rails or support frames, tiedown bolsters, locking pins, clevises, clamps, and hooks that are cracked, broken, loose, or missing.

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John H. Hill,

Administrator.

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